United States Court of Appeals for the Second Circuit

APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

77-7098

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B

P/S

RICHARD I. CLARK, as Executor of the
Estate of BERNICE C. GRUPE,

Plaintiff-Appellee,

-against-

JOHN LAMULA INVESTORS, INC. and
JOHN J. LAMULA,

Defendants-Appellants.

ON APPEAL FROM A FINAL JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
MAY 6 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

(Volume I of III - Pages A-1 - A-44[illegible])

PLUNKETT, WETZEL & JAFFE
Attorneys for Defendants-Appellants
20 East 46th Street
New York, New York 10017
(212) 687-7210

SILBERFELD, DANZIGER & BANGSER
Attorneys for Plaintiff-Appellee
230 Park Avenue
New York, New York 10017
(212) 889-8400

(6252)

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

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INDEX

	Page
DOCKET ENTRIES	A-1
COMPLAINT	A-4
EXHIBIT A TO COMPLAINT - LIST OF DEBENTURES PURCHASED BY DEFENDANTS FOR ACCOUNT OF PLAINTIFF	A-15
ANSWER	A-16
PLAINTIFF'S FIRST REQUEST TO DEFENDANTS FOR ADMISSION OF FACTS	A-19
EXHIBIT 1 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/8/74	A-43
EXHIBIT 2 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-44
EXHIBIT 3 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-45
EXHIBIT 4 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-46
EXHIBIT 5 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/7/74	A-47
EXHIBIT 6 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-48
EXHIBIT 7 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-49
EXHIBIT 8 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-50
EXHIBIT 9 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-51
EXHIBIT 10 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74	A-52

INDEX

Page

EXHIBIT 11 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74 A-53

EXHIBIT 12 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74 A-54

EXHIBIT 13 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/7/74 A-55

EXHIBIT 14 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 10/10/74 A-56

EXHIBIT 15 TO REQUEST - STANDARD & POOR'S BOND RATINGS A-57

EXHIBIT 16 TO REQUEST - MOODY'S BOND RECORD A-58

EXHIBIT 17 TO REQUEST - NOTICE TO HOLDERS OF ELCO CORPORATION A-60

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS A-61

PRE-TRIAL ORDER A-63

TRANSCRIPT OF JURY TRIAL A-110

PLAINTIFF'S WITNESSES:

BERNICE C. GRUPE
DIRECT A-151
CROSS A-284
REDIRECT A-365
RECROSS A-380

READING FROM DEPOSITION OF MISS EMERSON A-382

JOHN GALLETTA
DIRECT A-440
CROSS A-443

HARRY ROWNEY
DIRECT A-444
CROSS A-544
REDIRECT A-626
RECROSS A-634

INDEX

		Page
MINNIE VENA	DIRECT	A-637
	CROSS	A-691
	REDIRECT	A-697
JOHN J. LAMULA	DIRECT	A-699
	CROSS	A-895
	REDIRECT	A-1002

DEFENDANTS' WITNESSES:

ROBERT L. LOEB	DIRECT	A-1009 A-1053
	CROSS	A-1076
	REDIRECT	A-1082
BERNICE C. GRUPE	DIRECT	A-1026 A-1084
	CROSS	A-1051
DOROTHY EMERSON	DIRECT	A-1115
	CROSS	A-1120

PLAINTIFF'S REBUTTAL WITNESS:

JOHN ANGELO	DIRECT	A-1132
	CROSS	A-1149
	REDIRECT	A-1156
	RECROSS	A-1162
INTERROGATORIES TO JURY		A-1322
JUDGMENT		A-1337
BILL OF COSTS		A-1338
DEFENDANTS' NOTICE OF MOTION FOR ORDER SETTING ASIDE JUDGMENT		A-1341
PLAINTIFF'S NOTICE OF CROSS-MOTION FOR ATTORNEYS FEES, ETC.		A-1343
AFFIDAVIT OF ROBERT M. BLUM, ESQ., FOR PLAINTIFF, IN SUPPORT OF CROSS-MOTION FOR ATTORNEYS FEES, ETC.		A-1345

INDEX

Page

EXHIBIT 1 TO BLUM AFFIDAVIT - BILL DATED MARCH 3, 1975 A-1349

EXHIBIT 2 TO BLUM AFFIDAVIT - BILL DATED MAY 21, 1976 A-1350

EXHIBIT 3 TO BLUM AFFIDAVIT - BILL DATED AUGUST 21, 1975 A-1351

EXHIBIT 4 TO BLUM AFFIDAVIT - BILL DATED NOVEMBER 24, 1975 A-1352

REPLY AFFIDAVIT OF JOHN J. LAMULA, FOR DEFENDANTS, IN OPPOSITION TO CROSS-MOTION A-1353

ENDORSEMENT ORDER DENYING POST-TRIAL MOTIONS A-1355

NOTICE OF APPEAL A-1357

DOCKET ENTRIES

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	FILING DATE DAY	FILING DATE YEAR	J	N/S	O	R	R 23	DEMAND S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
208-1	75	2083	04	02	75	3	850	1			29		~~[illegible]~~ 0864	P	75 75	2083 2083

PLAINTIFFS

BERNICE C. GRUPE

DEFENDANTS

Goettel
~~[illegible], J.~~

JOHN LAMUIA INVESTORS, INC. AND
JOHN J. LAMUIA

2/16

J.N.

CAUSE

S.E.C. ACT 1933 &1934

ATTORNEYS

SILBERFELD, DANZIGER & BANGSER
230 PARK AVENUE,
NEW YORK CITY, N.Y. 10017
889- 8400

Baratta & Goldstein
1250 Broadway NYC 10001
736-8088

UNITED STATES COURT OF APPEALS
FILED
MAR 23 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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FILING FEES PAID

DATE	RECEIPT NUMBER	C.C. NUMBER

STATISTICAL CARDS

CARD	DATE MAILED

BERNICE C. GRUPE VS. JOHN LAMULA INVESTORS, INC. et-ano 75 Civ 2083 PG. 2.

DATE	NR.	PROCEEDINGS
5-02-75	1	Filed Complaint, Issued Summons.
5-02-75	2.	Filed Pltffs First Request to produce documents addressed to deft. John J. Lamula.
5-02-75	3	Filed Pltffs First Request to produce documents, addressed to deft . John J. Lamula Inves tors , Inc.
5-12-75	4	Filed summons and return-served the following: John J. Lamula by Louis Lamula on 05-06-75 John Lamula Investors, Inc. by Louis Lamula on 05-06-75.
6-05-75	5	Filed stip & order extending the time to answer to the complaint to 06-06-75. So ordered- FRANKEL, J.
07-07-75	6	Filed pltff's affdvt. of Robert M. Blum and notice of motion for an order pursuant to Rule 37 (FRCP). Ret. 07-09-75.
7-07-75	7	Filed pltff's memorandum in support of motion pursuant to Rule 37
7-08-75	8	Filed defts' answering affdvt. of Howard J. Goldstein in opposition to motion seeking sanctions against the defts.
07-08-75	9	Filed Memorandum- the motion of pltff. filed 07-07-75 is referred to the Hon. Harold J. Raby either to decide with the consent of the parties- or failing such consent, to hear and report. It is so ordered- FRANKEL, J. (m/n)
08-14-75	10	Filed stip & order that pltff's motion, submitted on 07-09-75, is withdrawn- pltff's first request to produce documents, addressed to eachdeft., is deemed to be responded to in writing, etc. as indicated- and the deposition of pltff. and the deposition of deft. John J. Lamula shall take place on 09-08-75 and 09-09-75 respectively. So ordered- FRANKEL, J.
2-17-75		PRE-TRIAL CONFERENCE HELD BY Magistrate Raby
-6-76	11	Filed pltffs second request for production of documents.
-17-76	12	Filed notice of reassigmment to Judge Goettel
-12-76	13	Filed pltf's first request to defts for admission of facts
2-76	14	Filed pltf's response to defts first request to produce documents
-26-76	--	Pre-trial conference held by mag. Raby
76		
0-27-76		Ju; ry trial begun. Hoettel,J.
0-28-76		Jury trial contd.
0-29-76		"
1/1/76		"
1/3/76		"
1/4/76		"
1/5/76		"
1/8/76		" and coucluded. Jury verdict for pltf. in the amount to be computed by counsel and judgment to be submitted.
-26-76	-15-	Filed trial brief
-26-76	-16-	Filed pltf's trial memorandum
-26-76	-17-	Filed defts supplemental trial memorandum
-26-76	-18-	Filed pltf's supplemental memorandum of law
-26-76	-19-	Filed pltf's second supplemental memorandum
-26-76	-20-	Filed pltf's third supplemental memorandum
-26-76	-21-	Filed ORDER Judgment #77,051 that pltf recover, jointly and severally of deft. John Lamula and John L. Investors Inc. the sum of $29,311.96, with inteterest at the rate of 6% percent per annum from 8-14-74 to the date hereof, together with costs of the action to pltf ---Goettel, J. Judgment entered-on 11-29-76-clerk m/n
2-03-76	-22	Filed bill of cost taxed on Juigment # 77,051 in the sum of $ 2,196.01
2-09-76	-23	Filed defts memorandum and notice of motion for an order a setting aside the verdict and judgment entered on 11-29-76. ret. 12-17-76

B

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	
BERNICE C. GRUPE	JOHN LAMULA INVESTORS, INC.	DOCKET NO. 75CIV2083 PAGE 2 OF ____ PAGES

DATE	NR.	PROCEEDINGS
12-27-76	24-	Filed affdvt. and notice of cross-motion for an order in the sound exercise of the discretion of the court pursuant to the final: sentence and awards: ret.. 12-29-76
2-27-76	-25-	Filed pltf's memorandum of law in opposition to motion and in support of above cross-motion
2 28-76	26	**Filed deft John J Lamula Reply affdvt in opposition to the cross motion of the pltf seeking reimbursement for counsel**
1-20-77	———	Filed memo. end. on document # 23 Following a jury-trial in which a verdict was entered for the pltf. defts moved to set aside the verdict, pltf. has cross-moved for atty's fees and alternatively if defts motion is granted, defts motion granted, for an award of punitive damages Since defts motion was not granted there is no need to consider pltf's alternate motion. All motions are denied. —Goettel, J. m/n
2-08-77		*Filed Transcript of record of proceedings, dated* 10-27, 28, 29, 1976 & 11-1, 76
9-28-77		*Filed Transcript of record of proceedings, dated* 11-3, 4, 5, 8, 1976
2-16-77	-27-	Filed defts notice of appeal to the USCA for the Second Circuit from order of 1-19-77. mailed copy to Silberfeld, Danziger & Bangser

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By ________ Deputy Clerk

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MAY 2 11 53 AM '75

- -x

BERNICE C. GRUPE, : 75 Civ.

Plaintiff, :

COMPLAINT

-against- :

JURY TRIAL IS DEMANDED

JOHN LAMULA INVESTORS, INC. and :
JOHN J. LAMULA,

Defendants. :

- -x

75 CIV. 2083

JUDGE FRANKEL

Plaintiff, BERNICE C. GRUPE, by her attorneys, Silberfeld, Danziger & Bangser, complaining of defendants, and each of them, alleges:

GENERAL ALLEGATIONS

1. This Court has jurisdiction of this action under the Securities Act of 1933 ("Securities Act"), Section 22 thereof (15 U.S.C., §77v); under the Securities Exchange Act of 1934 ("Exchange Act"), Section 27 thereof (15 U.S.C. §78 aa); and under principles of pendent jurisdiction.

2. This action is brought under and pursuant to Section 17(a) of the Securities Act (15 U.S.C. §77 q(a)); Sections 10(b), 15(c), 15A and 20(a) of the Exchange Act (15 U S.C. §78j, 78o(c), 78o-3 and 78t); Rules 10b-3, 10b-5 and 15 c 1-2, 1-6 and 1-7, adopted by the Securities and Exchange Commission pursuant to the authorities set forth in sections 10(b) and 15 of the Exchange Act; under and pursuant to Article

the National Association of Securities Dealers, Inc. ("NASD"); and under principles of common law applicable to fraudulent, negligent, wilful, reckless and deliberate breaches of duty.

3. Plaintiff resides at 351 Evans "A" Street, Williamsville, New York. She is, and at all times herein referred to was, inexperienced and unsophisticated in business, financial and investment market matters.

4. Upon information and belief: (i) defendant John Lamula Investors, Inc. ("JLI") is a corporation having its principal office for the regular transaction of business in the City, County and State of New York; (ii) at all times mentioned herein, defendant JLI was and is engaged in the business of buying and selling securities for public customers in the over-the-counter and other markets, as broker and dealer; and (iii) defendant JLI is, and at all times herein mentioned was, a member firm of the NASD.

5. Upon information and belief, (i) defendant John L. Lamula ("Lamula") was at all times herein mentioned, and is now, a resident of the City, County and State of New York; (ii) at all times herein mentioned, defendant Lamula was, and still is, the President and a Director of JLI, a person who controls JLI and a person engaged in the business of buying and selling securities for members of the public; (iii) defendant Lamula was and is registered with the NASD; and (iv) has served for many years, and now serves, as a financial advisor to many individuals and to various governmental committees and agencies.

FIRST COUNT

6. In the spring of 1974, plaintiff discussed with defendant Lamula the possible investment of about $100,000, which amount represented substantially all of plaintiff's available assets. Plaintiff informed defendant Lamula that she sought an income of about $1,000 per month from her investments. She asked whether she would be better advised to invest in high-quality bonds, and not stocks.

7. Defendant Lamula represented to plaintiff that corporate bonds were indeed the appropriate investment vehicle for her needs, and assured her that he would obtain for her account top-quality corporate bonds issued by corporations with which he was himself closely familiar.

8. Plaintiff was aware that defendant Lamula was engaged in the securities business as a principal of his own firm, and that he had served others as a financial advisor, and therefore placed reliance upon his judgment in investment matters. Defendant Lamula was aware, at all times herein, that plaintiff's knowledge of business and financial matters was very limited and that the approximately $100,000 which she was prepared to entrust to his investment judgment represented substantially all of plaintiff's assets.

9. Upon information and belief, plaintiff was requested by defendant Lamula to sign, and plaintiff did sign and deliver to defendants, an account form for a securities brokerage account with defendant JLI, which form gave defendants full discretion with respect to purchases and sales to be effected in plaintiff's said account.

10. On or about May 29, 1974, at defendant Lamula's suggestion, plaintiff borrowed $100,000 from The Bank of New York, Albany, signed a term note and security agreement maturing July 15, 1974 in the amount of $100,000 and bearing interest at 8 1/2% per annum, and secured said note with a $100,000 Savings Certificate previously issued to plaintiff by said bank. The full proceeds of the loan, in the sum of $99,804.45, were delivered by plaintiff to defendants. Subsequently, and in or about June, July and August, 1974, defendants demanded, and plaintiff delivered to them (or defendants charged her account with defendant JLI with) further sum of approximately $8,889.17.

11. On various trade dates between May 22, 1974 and July 10, 1974, defendants purchased for the account of plaintiff the respective principal amounts of the convertible subordinated debentures (hereinafter "debentures") of the eleven companies as listed on Exhibit A. The total net purchase price charged to plaintiff's account for these debentures was $105,050.

12. Despite the assurances given by defendant Lamula as aforesaid, none of the purchases made by defendants for plaintiff's account was of bonds. Upon information and belief, none of the convertible debentures purchased as aforesaid was "A" rated; and none of the corporate issues purchased as aforesaid, and as shown on Exhibit A hereto, was by any stretch of the imagination a high-quality or "blue-chip" investment. Only one of the said debentures was then traded on a securities exchange. Some were rated by recognized bond rating services as lacking desirable investment characteristics; some were rated as "speculative"; some were rated as "outright speculations". All were what are referred to in the investment business as "junk bonds" because of their poor quality.

13. The debentures were further unsuitable as investments for the account of plaintiff because:

a. The long-term maintenance of their yields, in each case, was deemed by rating services to be questionable;

b. Upon information and belief, only one of the debentures was traded on a securities exchange; all others were traded over-the-counter;

c. All of said debentures were convertible into stock, and were therefore subject to the impact of equity market pressures which plaintiff had been led by defendant to believe she should avoid;

d. The market for each of such convertible debentures, as defendants well knew, was thin and demand for all of said debentures was slight. As a result, there was a high probability that plaintiff would not, upon a resale of the said bonds, recover her costs; and

e. Upon information and belief, each of the corporations issuing the debentures was suffering business reverses, a fact known to defendants at the time they purchased them for plaintiff's account.

14. None of said facts respecting the rating, market, nature of issuers, demand for or real worth of the convertible debentures was communicated by defendants to plaintiff before, at the time of, or subsequent to their purchase. On the contrary, defendants assured plaintiff that the convertible debentures were

of high quality and suitable for her, despite their familiarity with her limited available capital, and her needs.

15. The purchases of the convertible debentures made by defendants for the account of plaintiff as aforesaid were effected by and through the use of the mails and in interstate commerce.

16. Defendants induced and effected the purchase of the debentures as aforesaid:

a. by means of the aforesaid manipulative, deceptive and fraudulent devices and contrivances;

b. by making untrue statements of material facts, and omitting to state material facts necessary to avoid the misleading effect of acts done and statements made, all as aforesaid, with knowledge or reasonable grounds to believe that the effect would be to conceal from or mislead plaintiff as to the true circumstances of the said transactions; and

d. by engaging in acts, practices and a course of business conduct which operated as a fraud and deceit upon plaintiff;

all of which constituted violations of section 17(a) of the Securities Act and sections 10(b) and 15(c)(1) of the Exchange Act, and the regulations thereunder, and the aforementioned rules of the NASD, and also constituted a fraud upon plaintiff actionable at common law.

17. Subsequently, plaintiff was advised that said debentures were unsuitable for her for the reasons hereinabove

set forth. She demanded that defendants rescind the transactions and restore to her the sum invested for her account as aforesaid. Between August 8, 1974 and early September, 1974 she caused them to be sold at their then market price. As a result of such sales plaintiff suffered a loss of $28,712, plus commissions incurred and paid.

SECOND COUNT

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 16 of this complaint, as if again set forth at this point.

19. Upon information and belief, defendant JLI acted as principal and dealer in its sale of the convertible debentures to plaintiff, and sold said debentures to plaintiff from its own inventory.

20. Upon information and belief, defendant JLI and defendant Lamula, who at all times herein controlled defendant JLI, sold the convertible debentures to plaintiff at prices representing very substantial mark-ups, apparently ranging between approximately 14% to 105%, over and above the apparent prevailing prices for said debentures in the regular or dealers' market on the purchase dates involved.

21. Upon information and belief the prices charged by defendants and paid by plaintiff for the debentures had no reasonable relation to the best prices at which the debentures could have been obtained on the same dates on the open or dealers' market, but were so much in excess of the said prices as to

constitute a fraud perpetrated by defendants upon plaintiff. Further, said prices charged to plaintiff were substantially in excess of those approved under the mark-up policies of the NASD, and constituted unfair practices on the part of defendants.

22. At no time prior to the respective purchases of the debentures for plaintiff's account did defendants, or either of them, disclose to plaintiff that she would be required to pay purchase prices for the securities purchased for her account which were substantially in excess of the apparent prevailing market prices for such securities.

23. Because the market for each of the said debentures was very inactive, and because the mark-up effected by defendants upon selling the said debentures was so excessive, plaintiff was from the inception of her acquisition of such debentures locked into the very great probability of substantial loss in the event of any sale of said debentures by her in the foreseeable future.

24. Defendants knew, or ought to have known, the facts alleged in paragraphs 21 and 23 hereof.

25. Defendants induced and effected the purchase of securities by plaintiff, and defendants effected the sale of securities to plaintiff, (i) by means of manipulative, deceptive and fraudulent devices and contrivances; (ii) by making untrue statements of material facts, and by omitting to state material facts necessary to avoid the misleading effect of acts done and statements made, with knowledge or reasonable grounds to believe that the effect would be to conceal from or mislead plaintiff as to the true circumstances of transactions effected by defendants for plaintiff's securities account; and (iii) by engaging

in acts, practices and a course of business conduct which operated as a fraud and deceipt upon plaintiff. As a result, defendants violated Sections 17(a) of the Securities Act and 10(b) and 15(c)(1) of the Exchange Act, and the regulations thereunder, perpetrated a fraud upon plaintiff, and engaged in wilful misconduct actionable at common law.

26. Defendants were under a fiduciary obligation to plaintiff, by reason of the circumstances hereinabove set forth, which duty was breached by their conduct as hereinabove set forth.

27. As a result of defendants' improper conduct, and defendants' breach of their fiduciary duties, all as aforesaid, plaintiff has suffered losses of not less than $28,712, and defendants profited at plaintiff's expense in an amount not yet determined.

THIRD COUNT

28. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 16 and 19 through 27 of this complaint as if again set forth at this point.

29. At the time of the discussions between plaintiff and defendant Lamula in the spring of 1974, as aforesaid, defendant Lamula represented to plaintiff that he would purchase, as her broker and representative, securities of the type and quality which he had then recommended and she had authorized him to acquire.

30. Upon information and belief, in making such representations defendant Lamula failed to disclose certain material facts to plaintiff, including:

a. His intention, believed to have been already formed by him, to act as principal in selling to plaintiff convertible debentures then held in the inventory of defendant JLI, for which defendant JLI was a market maker, and which defendant Lamula then knew to be an unprofitable investment for the portfolio of defendant JLI.

b. Defendant Lamula's then intention to disregard plaintiff's needs and best interests, in order to sell her securities which were not suitable investments for her.

31. Defendant Lamula deliberately misled plaintiff by failing to disclose such facts to plaintiff in the expectation, and for the purpose, of deceiving her, and to induce her to rely upon him and to vest in him and in defendant JLI the discretionary authority necessary to effect the fraudulent scheme concocted by him.

32. Plaintiff was in fact so deceived, and did in fact rely upon the representations, and the omissions to disclose material matters, hereinabove set forth.

33. As a result of the frauds perpetrated upon her by defendant Lamula, plaintiff suffered damages of $28,712, plus commissions incurred.

WHEREFORE, plaintiff demands judgment against defendants as follows:

a. On the First Count hereof, in the sum of $28,712, plus commissions;

b. On the Second Count hereof, requiring defendants and each of them to account, for, and to pay over to, plaintiff the profits realized by them and each of them by reason of their misconduct, and in addition for damages of not less than $28,712;

c. On the Third Count hereof, against defendant Lamula in the sum of $28,712 plus commissions, as compensatory damages, with punitive damages in the sum of $150,000;

d. Together with interest and the costs and disbursements of this action;

e. And for such other and further relief as the Court may deem proper.

SILBERFELD, DANZIGER & BANGSER

By____________________________
A Member of the Firm

Attorneys for Plaintiff
230 Park Avenue
New York, N. Y. 10017
Telephone (212) 889-8400

EXHIBIT A TO COMPLAINT - LIST OF DEBENTURES PURCHASED BY DEFENDANTS FOR ACCOUNT OF PLAINTIFF

EXHIBIT A

$20,000	Technical Operations 8% Convertible Subordinated Debentures due 2/1/85
$15,000	Nortek, Inc. 6% Convertible Subordinated Debentures due 6/15/88
$ 5,000	Monroe Group 7 7/8% Convertible Subordinated Debentures due 8/1/84
$20,000	Lincoln Mortgage Investors 8%, due 3/15/90
$ 5,000	Knight Industries Inc. 7 3/8 % Convertible Subordinated Debentures due 6/1/83
$20,000	Inflight Motion Pictures, Inc. 6% Convertible Subordinated Debentures due 3/1/89
$20,000	D.W.G. Corp. 5 1/2% Convertible Subordinated Debentures due 1/15/94
$20,000	Arwood Corp. 4 5/8% Convertible Subordinated Debentures due 6/15/87
$20,000	Applied Data Research, Inc. 6% Convertible Subordinated Debentures due 5/15/83
$30,000	Allegheny Beverage Corp. 6 1/4% Convertible Subordinated Debentures due 8/1/88
$10,000	Elco Corp. 4 1/2% Convertible Subordinated Debentures due 2/15/87

ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------------------------------X

BERNICE C. GRUPE

Plaintiff

-against-

JOHN LAMULA INVESTORS, INC. and
JOHN J. LAMULA

Defendants
----------------------------------X

ANSWER

File No. 75 Civ 2083
(Judge Frankel)

Defendants, by their attorneys, BARATTA & GOLDSTEIN, as and for their answer, allege as follows:

AS TO THE GENERAL ALLEGATIONS:

1. Denies knowledge or information sufficient to form a belief as to each and every allegation in Paragraphs 1, 2 and 3.

2. Denies each and every allegation in Paragraph 5.

AS TO THE FIRST COUNT:

3. Denies each and every allegation in Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

AS TO THE SECOND COUNT:

4. Denies each and every allegation in Paragraphs 20, 21, 23, 24, 25, 26 and 27.

5. Denies each and every allegation in Paragraph 22 insofar as it seems to allege that Plaintiff would be required to pay purchase prices "which were substantially in excess of the apparent prevailing market prices for such securities."

AS TO THE THIRD COUNT:

6. Denies each and every allegation in Paragraphs 30, 31, 32 and 33.

7. Denies each and every allegation in Paragraph 29 insofar as it seems to indicate that the individual defendant, JOHN J. LAMULA, acted other than through defendant, JOHN LAMULA INVESTORS INC.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

8. Statute of frauds.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

9. Upon information and belief, Plaintiff purposefully and wilfully sold the securities Plaintiff allegedly took a loss on at the lowest bid price for the sole purpose of being able to commence this action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

10. Plaintiff never requested or demanded any of her monies back prior to the alleged sale of her securities at a loss.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

11. The natural and orderly fluctuation of the prices of the securities which Plaintiff purchased was known to Plaintiff prior to her purchase thereof and therefore she had knowledge that she might have to take a loss on any securities she sold at any given time since the price of that security could not be predicted in advance.

WHEREFORE, Defendants demand judgment against Plaintiff dismissing the complaint together with the costs and disbursements of this action and for such other and further relief as to this court may seem just and proper.

Dated: New York, N Y
June 5th, 1975

BARATTA & GOLDSTEIN

By: Howard J Goldstein
HOWARD J. GOLDSTEIN
Attorneys for Defendants
1250 Broadway
New York, N Y 10001

TO: SILBERFELD, DANZIGER &
BANGSER
Attorneys for Plaintiff
230 Park Avenue
New York, N Y 10017

PLAINTIFF'S FIRST REQUEST TO DEFENDANTS FOR ADMISSION OF FACTS

FILE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - x

BERNICE C. GRUPE, :

Plaintiff, :

-against- :

JOHN LAMULA INVESTORS, INC. :
and JOHN J. LAMULA,
:
Defendants.
:
- - - - - - - - - - - - - - - - - - - x

75 Civ. 2083
~~(MEF)~~ Goettel, J

PLAINTIFF'S FIRST REQUEST TO DEFENDANTS FOR ADMISSION OF FACTS

MAR 17 12 12 PM '76

S I R S :

PLEASE TAKE NOTICE, that pursuant to Rules 26(b) and 36, Federal Rules of Civil Procedure, plaintiff requests that defendants John Lamula Investors, Inc. ("JLI") and John J. Lamula ("Lamula"), within thirty (30) days after service of this Request to Admit, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial of this action, admit the truth of the facts set forth in Part II hereof.

I.

Definitions

As used herein, the following terms shall have the meanings set forth below:

A. "Documents" shall mean and include all items comprehended within that term used in Rule 34, F.R.Civ.P., including, without limitation, all items which embody any handwritten, typed, printed, oral, visual or electronic communications, minutes, bulletins, circulars, press releases, notices, specifications, instructions, advertisements, literature, books, magazines, newspapers, booklets, work assignments, reports, motion picture films, sound recordings, photographs, studies, analyses, comparisons, surveys, computer programs and data, financial statements, monthly statements, confirmations, memoranda, memoranda of conversations, notes, notebooks, diaries, data sheets, work sheets, calculations, enclosures, exhibits, attachments, schedules, amendments, modifications, supplements, drafts of the aforesaid and all copies of the aforesaid upon which have been placed any additional marks or notations, in the possession, custody or control of defendants.

B. "JLI" shall mean John Lamula Investors, Inc. and any predecessor or successor in interest thereto, whether a corporation, partnership, limited partnership, sole proprietorship or otherwise, its present and former officers, directors, employees, agents, partners and limited partners, and any and all other persons acting or purporting to act on behalf thereof.

C. "Lamula" shall mean John J. Lamula, an individual defendant herein, and any person acting or purporting to act on his behalf.

D. "Plaintiff" shall mean Bernice C. Grupe, or anyone acting or purporting to act on her behalf.

E. Reference to terms in the male gender includes those in the female, and vice versa; terms in the singular include those in the plural, and vice versa.

II.

Matters to be Admitted

1. JLI sold to plaintiff from its own trading account inventory the convertible debentures listed below, at the prices, and with the charges for accrued interest, and in the quantities, as follows:

(a) On or about May 22 or May 23, 1974 as trade date:

Quantity	Description	Price	Amount	Interest	Net Amounts
$30,000	Allegheny Beverage Corp. 6-1/4% of 1988 F & A 1	59	$17,700	$625.00	$18,325.00
$20,000	D.W.G. Corp. 5-1/2% of 1994 J & J 15	54	10,800	415.56	11,215.56
$20,000	Applied Data Research 6% of 1983 M & N 15	65	13,000	53.33	13,053.33
$20,000	Arwood Corp. 4-5/8% of 1987 J & D 15	50	10,000	426.53	10,426.53
$20,000	Inflight Services 6% of 1989 M & S 1	41	8,200	300.00	8,500.00
$ 5,000	Knight Industries 7-3/8% of 1983 J & D 1	59	2,950		2,950.00
$20,000	Lincoln Morgage Investors 8% of 1990 M & S 15	56	11,200	337.78	11,537.78
$15,000	Nortek Inc. 6% of 1988 J & D 15	53	7,950	415.00	8,365.00
$15,000	Technical Operations 8% of 1985 F & A 1	79	11,850	400.00	12,250.00
$ 5,000	Monroe Group 7-7/8% of 1984 F & A 1	61	3,050	131.25	3,181.25

(b) On or abour June 3, 1974 as trade date:

Quantity	Description	Price	Amount	Interest	Net Amounts
$ 5,000	Technical Operations 8% of 1985 F & A 1	79	$ 3,850	$286.67	$ 4,136.67

(c) On or about July 10, 1974 as trade date:

$10,000	Elco Corp. 4-1/2% of 1987 F & A 15	45	4,500	152.50	4,752.50

2. (a) With regard to convertible debentures of Allegheny Beverage Corp., JLI engaged in the following transactions in its trading account, and no others, between April 2, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
4/2/74	Bought $20,000	$490.00
4/4/74	Bought $16,000	$480.00
4/10/74	Bought $10,000	$470.00
4/19/74	Sold $35,000	$480.50
5/29/74	Bought $20,000	$510.00

(b) Immediately preceding the settlement of the sale to plaintiff of $30,000 Allegheny Beverage Corp. convertible debentures 6-1/4% of 1988, F & A 1, JLI had an inventory of $31,000 face amount of such convertible debentures.

3. (a) With regard to convertible debentures of D.W.G. Corp., JLI engaged in the following transaction in its trading account, and no others, between April 2, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
4/2/74	Bought $20,000	$480.50

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 D.W.G. Corp. convertible debentures 5-1/2% of 1994, J & J 15, JLI had an inventory of $20,000 face amount of such convertible debentures.

4. (a) With regard to convertible debentures of Applied Data Research, JLI engaged in the following transactions in its trading account, and no others, between April 8, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
4/8/74	Bought $10,000	$520.00
5/ /74	Bought $10,000	$570.00

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 Applied Data Research convertible debentures 6% of 1983, M & N 15, JLI had an inventory of $20,000 face amount of such convertible debentures.

5. (a) With regard to convertible debentures of Arwood Corp., JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/28/74	Bought $20,000	$470.00

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 Arwood Corp. convertible debentures 4-5/8% of 1987, J & D 15, JLI had an inventory of $20,000 face amount of such convertible debentures.

6. (a) With regard to convertible debentures of Inflight Services, JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $20,000	$380.00

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 Inflight Services convertible debentures 6% of 1989, M & S 1, JLI had an inventory of

$20,000 face amount of such convertible debentures.

7. (a) With regard to convertible debentures of Knight Industries, JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $5,000	$530.00

(b) Immediately preceding the settlement of the sale to plaintiff of $5,000 Knight Industries convertible debentures 7-3/8% of 1983, J & D 1, JLI had an inventory of $5,000 face amount of such convertible debentures.

8. (a) With regard to convertible debentures of Lincoln Mortgage Investors, JLI was long $2,500 face amount thereof on April 30, 1974.

(b) With regard to convertible debentures of Lincoln Mortgage Investors, JLI engaged in the following transaction in its trading account, and no others, from and after April 30, 1974 and prior to the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $19,000	$510.00

(c) Immediately preceding the settlement of the sale to plaintiff of $20,000 Lincoln Mortgage Investors convertible debentures 8% of 1990, M & S 15, JLI had an inventory of $21,500 face amount of such convertible debentures.

9. (a) With regard to convertible debentures of Nortek Inc., JLI engaged in the following transactions in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $20,000	$440.00
5/30/74	Sold $5,000	$420.00

(b) Immediately preceding the settlement of the sale to plaintiff of $15,000 Nortek Inc. convertible debentures 6% of 1988, J & D 15, JLI had an inventory of $15,000 face amount of such convertible debentures.

10. (a) With regard to the first acquisition by plaintiff of convertible debentures of Technical Operations, JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $15,000	$750.00

(b) Immediately preceding the settlement of the sale to plaintiff of $15,000 Technical Operations convertible debentures 8% of 1985, F & A 1, JLI had an inventory of $15,000 face amount of such convertible debentures.

(c) With regard to the second acquisition by plaintiff of convertible debentures of Technical Operations, JLI engaged in the following transaction in its trading account, and no others, from May 31, 1975 and the sale thereof to plaintiff on June 3, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
6/3/74	Bought $6,000	$700.00

(d) Immediately preceding the settlement of the sale to plaintiff on June 10, 1974 of $5,000 Technical Operations convertible debentures 8% of 1985, F & A 1, JLI had an inventory of $6,000 face amount of such convertible debentures.

11. (a) With regard to convertible debentures of Monroe Group, JLI engaged in the following transaction in its

trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $5,000	$530.00

(b) Immediately preceding the settlement of the sale to plaintiff of $5,000 Monroe Group convertible debentures 7-7/8% of 1984, JLI had an inventory of $5,000 face amount of such convertible debentures.

12. (a) With regard to convertible debentures of Elco Corp., JLI engaged in the following transaction in its trading account, and no others, between and the sale thereof to plaintiff on July 17, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture

(b) Immediately preceding the settlement of the sale to plaintiff of $10,000 convertible debentures 4-1/2% of 1987, F & A 15, JLI had an inventory of $ face amount of such convertible debentures.

13. (a) JLI was a market maker with respect to each of the issues of convertible debentures sold by JLI

to plaintiff.

(b) JLI was not a market maker with respect to the common stock of Seaboard Coast Lines Inc. ("Seaboard").

14. (a) Plaintiff sold all the convertible debentures through L. F. Rothschild & Co. as brokers.

(b) The brokerage advices on the letterhead of L. F. Rothschild & Co. identified at the deposition of plaintiff before trial collectively as "Plaintiff's Exhibit 45 for Identification" and attached hereto as Exhibits 1 through 14* accurately show: (i) the items and amounts of convertible debentures sold for plaintiff's account; (ii) the price at which the same were sold; (iii) the gross amount received therefor; (iv) the accrued interest received therefor; (v) the commission paid thereon; (vi) the net proceeds thereof; (vii) the trade date and delivery dates thereof.

15. (a) The following computation of plaintiff's loss is mathematically correct:

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* Included in the group of confirmations marked "Plaintiff's Exhibit 45 for Identification" were two yellow confirmations with regard to Allegheny Beverage convertible debentures, and two matching green cancellation slips with respect thereto. These are not included in the Exhibits to this Request to Admit.

	Security	Purchase Price	Sales Proceeds	Loss
(i)	Allegheny	$17,700	$ 9,750	$7,950
(ii)	D.W.G.	10,800	8,350	2,450
(iii)	Applied Data	13,000	10,900	2,100
(iv)	Arwood	10,000	8,900	1,100
(v)	Inflight	8,200	4,700	3,500
(vi)	Knight	2,950	2,375	575
(vii)	Lincoln	11,200	5,700	5,500
(viii)	Nortek	7,950	6,075	1,875
(ix)	Technical Operations	15,700	12,100	3,600
(x)	Monroe	3,050	1,900	1,150
(xi)	Elco	4,500	2,950	1,550

(b) The following computation of JLI's profits is mathematically correct:

	Security	Cost to JLI	Sales Price to plaintiff	Profit
(i)	Allegheny	$15,300	$17,700	$2,400
(ii)	D.W.G.	9,610	10,800	1,190
(iii)	Applied Data	11,400	13,000	1,600
(iv)	Arwood	9,400	10,000	600

	Security	Cost to JLI	Sales price to plaintiff	Profit
(v)	Inflight	$ 7,600	$ 8,200	$ 600
(vi)	Knight	2,650	2,950	300
(vii)	Lincoln	10,200	11,200	1,000
(viii)	Nortek	6,600	7,950	1,350
(ix)	Technical Operations	14,750	15,800	1,050
(x)	Monroe	2,650	3,050	400
(xi)	Elco	4,200	4,600	400

16. On May 29, 1974, defendant Lamula accompanied plaintiff to an office of the Bank of New York, Albany.

17. On May 29, 1974, in defendant Lamula's presence, plaintiff executed a note and security agreement with Bank of New York, Albany, in the face amount of $100,000, the original of which was marked plaintiff's Exhibit 13 for identification at plaintiff's deposition.

18. Defendant Lamula accompanied plaintiff to an office of the Bank of New York, Albany on May 30, 1974.

19. On May 30, 1974, defendant Lamula received from plaintiff at the Bank of New York, Albany a certified check drawn by plaintiff on her account with said Bank and payable to the order of defendant JLI in the sum of $99,804.45.

20. Defendant Lamula delivered plaintiff's certified check in the sum of $99,804.45 to defendant JLI on May 30, 1974.

21. Mini Vena, Secretary and Treasurer of defendant JLI, prepared a receipt for the said $99,804.45 check on May 30, 1974.

22. Plaintiff's Exhibit 12 for identification was prepared and issued by defendants, and bears the signature and handwriting of defendant Lamula.

23. Plaintiff's Exhibit 20 for identification, so marked at plaintiff's deposition before trial, was prepared by defendants.

24. The three documents attached together for identification as plaintiff's Exhibit 22 for identification at plaintiff's deposition before trial were each prepared by defendants.

25. (a) Under date of June 7, 1974, plaintiff issued her check number 251, drawn on the Bank of New York, Albany, payable to the order of defendant JLI in the sum of $4,136.67.

(b) The check referred to in item (a) above, which was identified as plaintiff's Exhibit 24 at plaintiff's deposition, was received by defendant JLI on or about June 12, 1974.

(c) A receipt (plaintiff's Exhibit 25 for identification) was issued therefor.

26. Plaintiff's Exhibit 27 for identification, so marked at plaintiff's deposition before trial, is a note to plaintiff from defendant Lamula, initialed by him.

27. The document which was identified as plaintiff's Exhibit 32 at plaintiff's deposition before trial is a true copy of a letter written by defendant Lamula to plaintiff on or about July 10, 1974.

28. Defendant Lamula received the original of the letter, a copy of which was identified as plaintiff's Exhibit 34 at plaintiff's deposition before trial.

29. Defendant JLI received and deposited plaintiff's check number 269, dated July 16, 1974 and drawn on her account with the Bank of New York, Albany, and payable to the order of said defendant in the sum of $4,752.50 (said check was identified as plaintiff's Exhibit 35 at plaintiff's deposition before trial).

30. On July 15, 1974, the Bank of New York, Albany

charged plaintiff $1,117.81 as interest on the loan taken out by her from said Bank on May 20, 1974, as evidenced by the note previously referred to herein and which is plaintiff's Exhibit 13 for identification, so marked at her pre-trial deposition.*

31. During the meetings had by plaintiff with defendant Lamula during the last week of July or the first week of August, 1974, defendants delivered to plaintiff a statement and attached sheet, copies of which were jointly marked as plaintiff's Exhibit 47 for identification at her pre-trial deposition.

32. (a) On or about June 21, 1974, as trade date, defendant JLI sold to plaintiff from its own trading account, and for its own risk, 1,000 shares of Seaboard common stock at a price of $25.00 per share.

(b) Defendants cancelled the said purchase of Seaboard common stock as of July 2, 1974.

(c) Defendant Lamula was advised, in or about June 1974, that the quarterly dividend rate of $.35 per share then applicable to Seaboard common stock was going to be increased to possibly $.50 or $.55 per share in the near future.

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* Such interest charge was evidenced by the letter to plaintiff from Paul J. Layden dated July 17, 1974, marked as plaintiff's Exhibit 37 for identification at plaintiff's deposition before trial.

(d) The advice referred to in subparagraph 32 (c) immediately preceding was received by plaintiff from an officer or director of Seaboard.

33. (a) On June 24, 1974, plaintiff departed for Europe from John F. Kennedy International Airport ("JFK").

(b) Defendant Lamula knew on or before June 20, 1974 of plaintiff's intention to depart on June 24, 1974 from JFK.

34. Defendant Lamula met with Mrs. Grupe and Dorothy Emerson:

(a) On a weekday evening in March 1974 occurring before March 19, 1974;

(b) On March 19, 1974;

(c) On March 20, 1974;

(d) On March 21, 1974;

(e) On March 26, 1974;

(f) On April 2, 1974;

(g) On April 15, 1974;

(h) On April 16, 1974;

(i) On May 14, 1974;

(j) On May 21, 1974;

(k) On May 28, 1974;

(l) and at no other times between March 19, 1974 and May 28, 1974 except as to those dates above referred to and as admitted herein in response to this Request by defendant Lamula.

35. (a) On May 23, 1974, each of the debenture issues referred to below was rated as indicated in the table below.

Security	(i) Standard & Poors	(ii) Moody's
Technical Operations 8% of 1985 F & A 1	B	No Rating
Nortek Inc. 6% of 1988 J & D 15	No Rating	No Rating
Monroe Group 7-7/8% of 1984 F & A 1	No Rating	No Rating
Lincoln Mortgage Investors 8% of 1990 M & S 15	No Rating	No Rating
Knight Industries 7-3/8% of 1983 J & D 1	No Rating	No Rating

Security	(i) Standard & Poors	(ii) Moody's
Inflight Services 6% of 1989 M & S 1	B	B
D.W.G. Corp. 5-1/2% of 1994 J & J 15	No Rating	No Rating
Arwood Corp. 4-5/8% of 1987 J & D 15	B	B
Applied Data Research 6% of 1983 M & N 15	No Rating	No Rating
Allegheny Beverage Corp. 6-1/4% of 1988 F & A 1	CCC	Caa

(b) On or about July 10, 1974 the Elco Corp. debenture issue referred to below was rated as indicated below.

Security	(i) Standard & Poors	(ii) Moody's
Elco Corp. 4-1/2% of 1987 F & A 15	CCC	B

36. (a) The extract attached hereto as Exhibit 15 is the explanation and key for understanding and interpreting its corporate bond ratings as issued by Standard & Poors Corporation.

(b) The extract attached hereto as Exhibit 16 is the explanation and key for understanding and interpreting its corporate bond ratings as issued by Moody's Investor Service, Inc.

37. (a) Defendant Lamula was, at all times between March 1, 1974 and August 6, 1974, the President and a director of defendant JLI.

(b) Defendant Lamula was, at all times between March 1, 1974 and August 6, 1974, a stockholder of defendant JLI.

(c) Defendant Lamula was, at all times between March 1, 1974 and August 6, 1974, registered with the NASD.

38. Each of the order tickets respecting the transactions whereby convertible debentures were sold by defendants to plaintiff, copies of which were marked as Exhibits 70, 77, 78, 79, 80, 81, 82, 83, 84, 85 and 86:

(a) was made at or near the time of the sale by defendants to plaintiff of the security therein referred to;

(b) was time-stamped at approximately the hour and minute that the transaction described therein was effected;

(c) was made by an employee of defendant JLI having knowledge of the data thereon shown.

(d) was made by defendants in the regular practice of their business activity.

39. (a) Within two or three business days following July 3, 1974, defendants received a "Notice To Holders of Elco Corporation 4-1/2% Convertible Subordinated Debentures Due February 15, 1987," dated July 3, 1974.

(b) A true copy of the Notice referred to in subparagraph (a) of this paragraph 39 is attached to this Request as Exhibit 17.

40. (a) The National Daily Quotation Service, published by National Quotation Bureau, Inc., with offices at 116 Nassau Street, New York, New York, issues each business day a listing of bonds, known throughout the securities industry as the "yellow sheets".

(b) Each of the issues of convertible debentures which plaintiff acquired from defendants was listed in the yellow sheets throughout May, June, July and August of 1974.

(c) The yellow sheets are commonly referred to by the public and persons in the securities industries for current information as to the name and telephone number of market makers for any bond or debenture issue listed therein, and as to the quotations of such market makers respecting such security for such date.

(d) The yellow sheet information is assembled from defendant JLI on each business day by runner from the National Daily Quotation Service.

(e) The listing of market makers respecting any particular issue of bonds or debentures is made by the market makers filling in information on an IBM card, for collection by the runner each day.

(f) As a subscriber to the yellow sheet service (bond listings) of the National Daily Quotation Service, defendant JLI received each month during May through August, 1974 a packet of IBM cards, to be filled in each day for each security with respect to which defendant JLI wished to be shown in the yellow sheets as a market maker.

Dated: New York, New York
April 21, 1976

Yours, etc.,

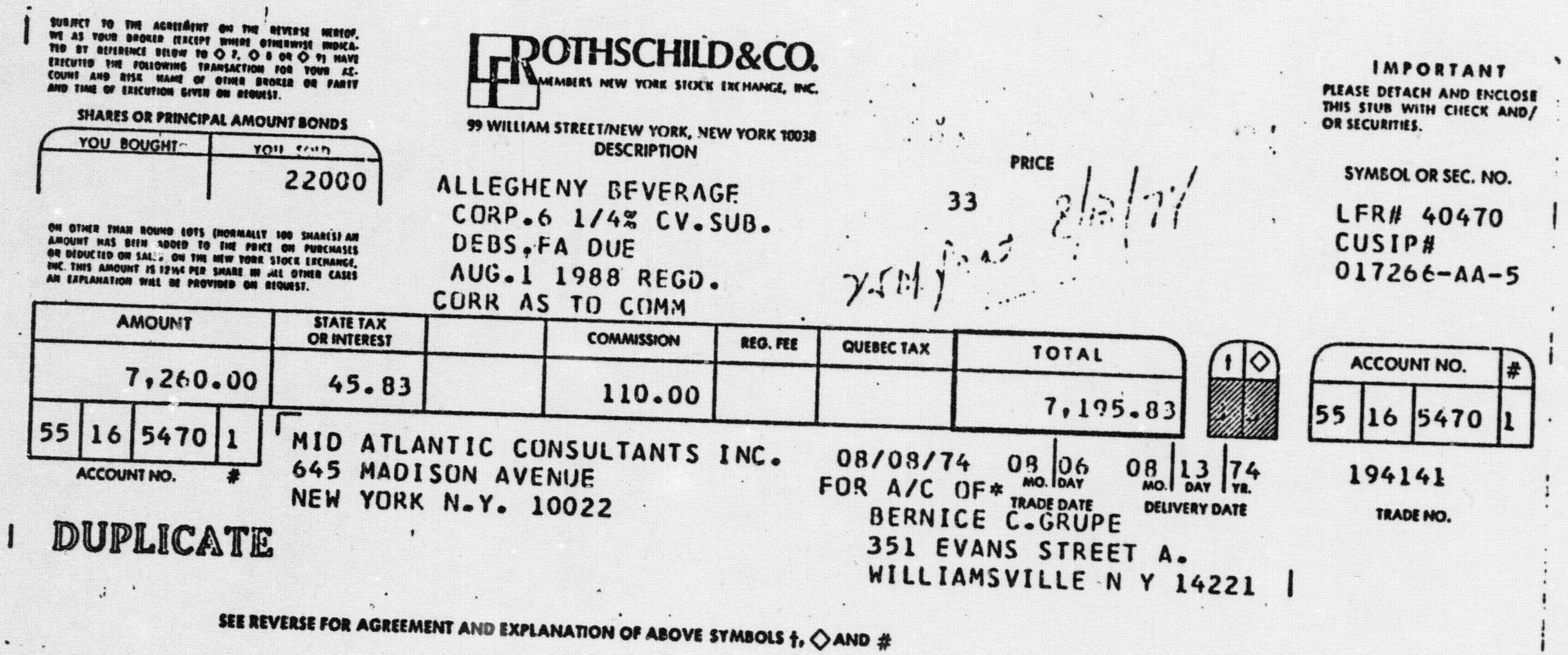
SILBERFELD, DANZIGER & BANGSER

By
A Member of the Firm
Attorneys for plaintiff
230 Park Avenue
New York, New York 10017
(212) 889-8400

To:

BARATTA & GOLDSTEIN, ESQS.
Attorneys for defendants
1250 Broadway
New York, New York 10001
(212) 736-8088

EXHIBIT 1 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/8/74



SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	22000

DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
ALLEGHENY BEVERAGE CORP.6 1/4% CV.SUB. DEBS.FA DUE AUG.1 1988 REGD. CORR AS TO COMM	33	LFR# 40470 CUSIP# 017266-AA-5

8/13/74

7.5M pd

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
7,260.00	45.83		110.00			7,195.83	▨	▨

ACCOUNT NO.			#
55	16	5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

	TRADE DATE MO.	TRADE DATE DAY	DELIVERY DATE MO.	DELIVERY DATE DAY	DELIVERY DATE YR.
08/08/74	08	06	08	13	74

FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

ACCOUNT NO.			#
55	16	5470	1

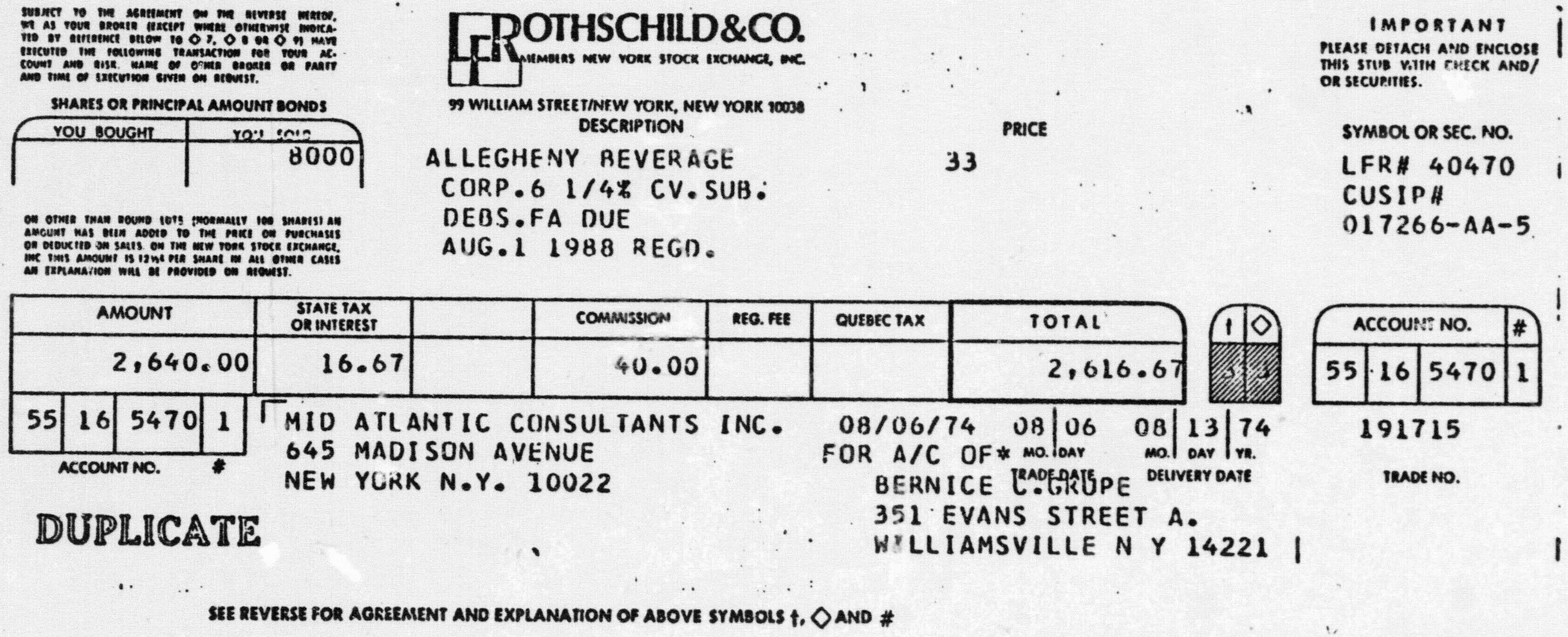
194141
TRADE NO.

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 1

EXHIBIT 2 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74



SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

LFR ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	8000

DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
ALLEGHENY BEVERAGE CORP.6 1/4% CV.SUB. DEBS.FA DUE AUG.1 1988 REGD.	33	LFR# 40470 CUSIP# 017266-AA-5

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC THIS AMOUNT IS 12½¢ PER SHARE IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
2,640.00	16.67		40.00			2,616.67	▨	▨

ACCOUNT NO.			#
55	16	5470	1

191715
TRADE NO.

55	16	5470	1
ACCOUNT NO.			#

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74 | 08 MO. | 06 DAY | TRADE DATE | 08 MO. | 13 DAY | 74 YR. | DELIVERY DATE

FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 2

EXHIBIT 3 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74

SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

LFR ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	5000

DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
DWG CORP 5 1/2% CV SUB DEBS JJ15 DUE JAN 15 1994 REGD	43	LFR# 55639 CUSIP# 233351-AB-1

ON OTHER THAN ROUND LOTS (NORMALLY 100 SH[illegible]) AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
2,150.00	21.39		25.00	.05		2,146.34	▨	▨

ACCOUNT NO.			#
55	16	5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE MO.	TRADE DATE DAY	DELIVERY DATE MO.	DELIVERY DATE DAY	DELIVERY DATE YR.
08	06	08	13	74

ACCOUNT NO.			#
55	16	5470	1

TRADE NO. 191750

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 3

EXHIBIT 4 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74

SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ P, ◇ B OR ◇ S) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD	DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
	5000	DWG CORP 5 1/2% CV SUB DEBS JJ15 DUE JAN 15 1994 REGD	44	LFR# 55639 CUSIP# 233351-AB-1

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
2,200.00	21.39		25.00	.05		2,196.34	▨	▨

ACCOUNT NO.			#
55	16	5470	1

ACCOUNT NO.			#
55	16	5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE MO.	TRADE DATE DAY	DELIVERY DATE MO.	DELIVERY DATE DAY	DELIVERY DATE YR.
08	06	08	13	74

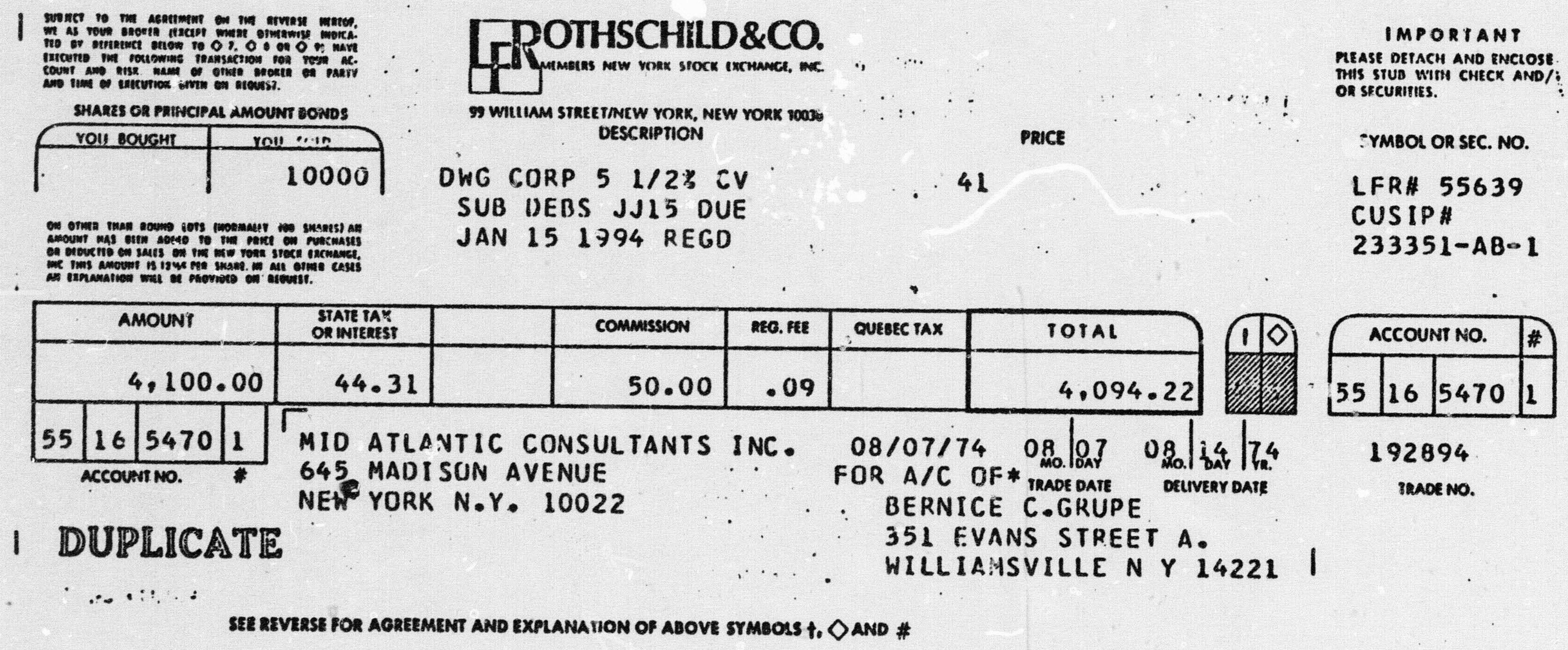
TRADE NO. 191751

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 4

EXHIBIT 5 TO REQUEST - ROTHSCHILD BUY/SELL
TRANSACTIONS STATEMENT 8/7/74



SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

LFROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD	DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
	10000	DWG CORP 5 1/2% CV SUB DEBS JJ15 DUE JAN 15 1994 REGD	41	LFR# 55639 CUSIP# 233351-AB-1

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇	ACCOUNT NO.			#
4,100.00	44.31		50.00	.09		4,094.22	▨	▨	55	16	5470	1

ACCOUNT NO.			#
55	16	5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/07/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE: 08 MO. 07 DAY
DELIVERY DATE: 08 MO. 14 DAY 74 YR.

TRADE NO. 192894

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 5

EXHIBIT 6 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74

SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	20000

DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
APPLIED DATA RESEARCH INC.6% CV. SUB.DEBS.MN15 DUE MAY 15 1983 REGD.	55	LFR# 41239 CUSIP# 038159-AA-7

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇	ACCOUNT NO.	#
11,000.00	293.33		100.00			11,193.33	▨	▨	55 16 5470	1

ACCOUNT NO.	#
55 16 5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE MO.	DAY	DELIVERY DATE MO.	DAY	YR.	TRADE NO.
08	06	08	13	74	191719

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 6

EXHIBIT 7 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74

SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

LFROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	20000

DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
ARWOOD CORP.4 5/8% CV.SUB.DEBS.JD15 DUE JUNE 15 1987 REGISTERED	45	LFR# 41422 CUSIP# 043375-AA-2

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
9,000.00	149.03		100.00	.	.	9,049.03	[illegible]	[illegible]

ACCOUNT NO.			#
55	16	5470	1

TRADE NO. 191720

ACCOUNT NO.			#
55	16	5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74

TRADE DATE MO.	DAY	DELIVERY DATE MO.	DAY	YR.
08	06	08	13	74

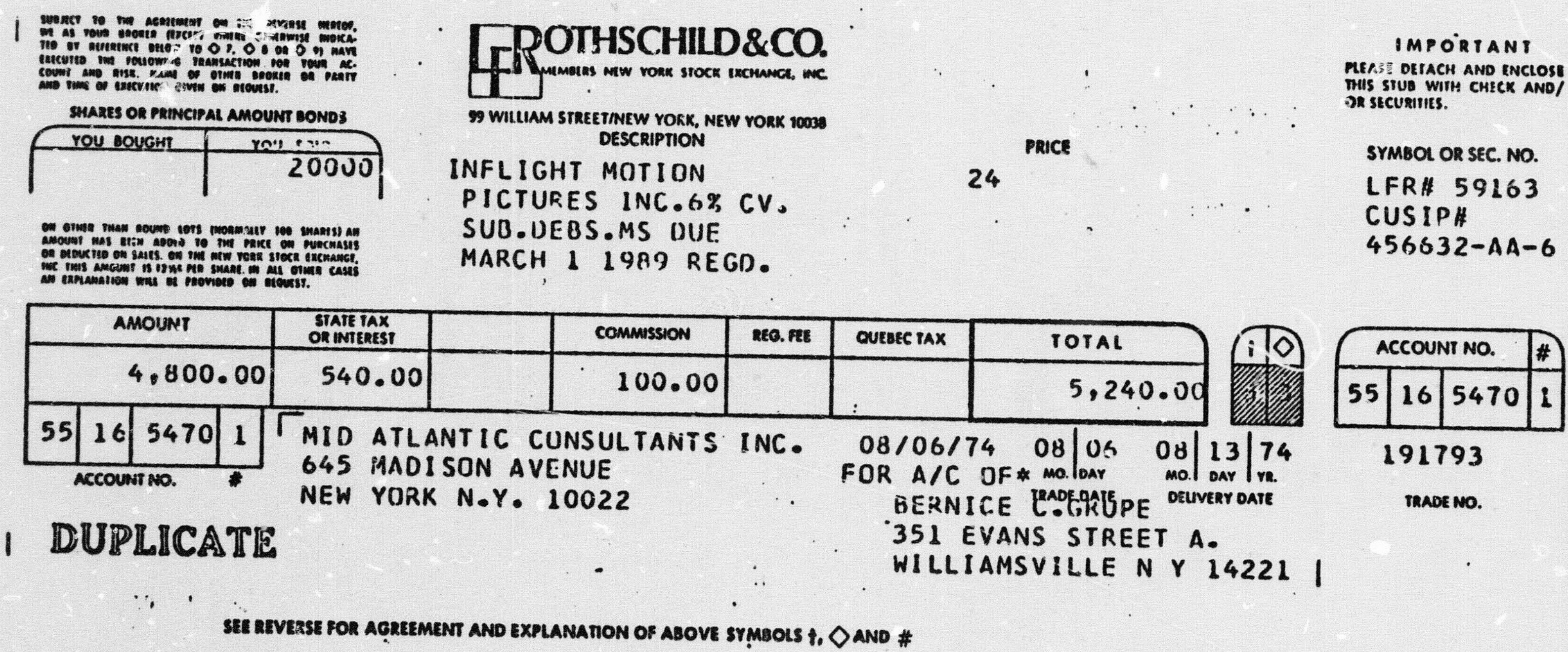
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 7

EXHIBIT 8 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74



SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	20000

DESCRIPTION
INFLIGHT MOTION
PICTURES INC.6% CV.
SUB.DEBS.MS DUE
MARCH 1 1989 REGD.

PRICE
24

SYMBOL OR SEC. NO.
LFR# 59163
CUSIP#
456632-AA-6

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
4,800.00	540.00		100.00			5,240.00		

ACCOUNT NO.			#
55	16	5470	1

191793
TRADE NO.

55	16	5470	1

ACCOUNT NO. #

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE: 08 MO. 06 DAY

DELIVERY DATE: 08 MO. 13 DAY 74 YR.

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 8

EXHIBIT 9 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74

SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	5000

DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
KNIGHT IND.INC. 7 3/8% CV.SUB.DEBS. JD DUE JUNE 1 1993	48	LFR# 60526 CUSIP# 499026-AB-8

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
2,400.00	73.75		25.00			2,448.75		

ACCOUNT NO.			#
55	16	5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE: 08 MO. 06 DAY
DELIVERY DATE: 08 MO. 13 DAY 74 YR.

ACCOUNT NO.			#
55	16	5470	1

TRADE NO. 191802

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 9

EXHIBIT 10 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74

SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

LFR ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD	DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
	20000	LINCOLN MORTGAGE INVESTORS 8% CV.SUB DEBS.MS15 DUE MARCH 15 1990 REGD	29	LFR# 61252 CUSIP# 534038-AA-2

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES ON THE NEW YORK STOCK EXCHANGE, INC THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
5,800.00	657.78		100.00			6,357.78	▨	▨

ACCOUNT NO.			#
55	16	5470	1

191808
TRADE NO.

55	16	5470	1
ACCOUNT NO.			#

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE		DELIVERY DATE		
MO.	DAY	MO.	DAY	YR.
08	06	08	13	74

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 10

EXHIBIT 11 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74

SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

LFROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

[illegible] 45 [illegible]
9/5/75 [illegible]

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD
	15000

DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
NORTEK IND.6% JD15 DUE JUNE 15 1988 REGISTERED	41	LFR# 74523 CUSIP# 656559-AA-9

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		- COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
6,150.00	145.00		75.00			6,220.00	▨	▨

ACCOUNT NO.			#
55	16	5470	1

191901
TRADE NO.

55	16	5470	1
ACCOUNT NO.			#

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF*
BERNICE C. GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

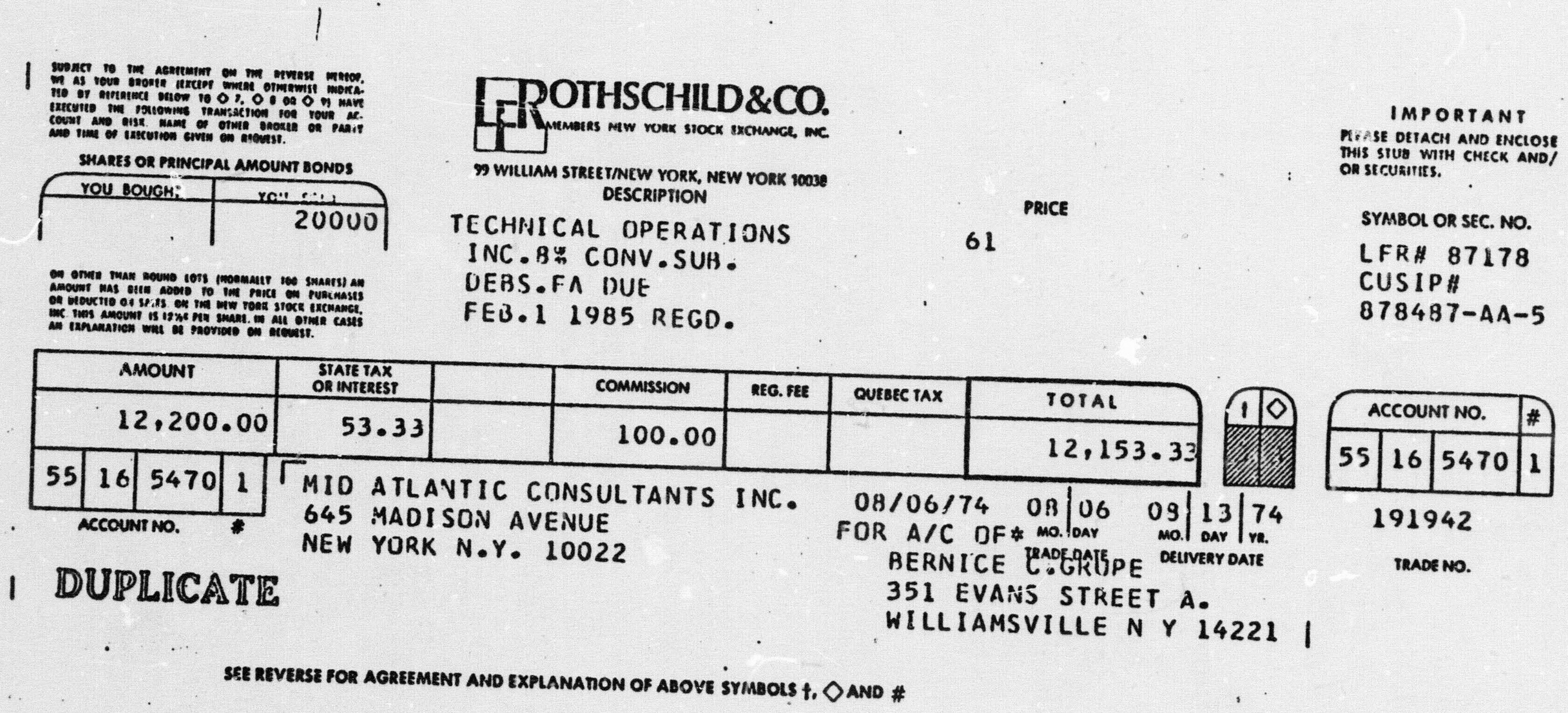
TRADE DATE MO.	TRADE DATE DAY	DELIVERY DATE MO.	DELIVERY DATE DAY	DELIVERY DATE YR.
08	06	08	13	74

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 11

EXHIBIT 12 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/6/74



SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

LFR ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD	DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
	20000	TECHNICAL OPERATIONS INC.8% CONV.SUB. DEBS.FA DUE FEB.1 1985 REGD.	61	LFR# 87178 CUSIP# 878487-AA-5

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
12,200.00	53.33		100.00			12,153.33	▨	▨

ACCOUNT NO.			#
55	16	5470	1

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/06/74
FOR A/C OF* BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE: 08 06 (MO. DAY)

DELIVERY DATE: 09 13 74 (MO. DAY YR.)

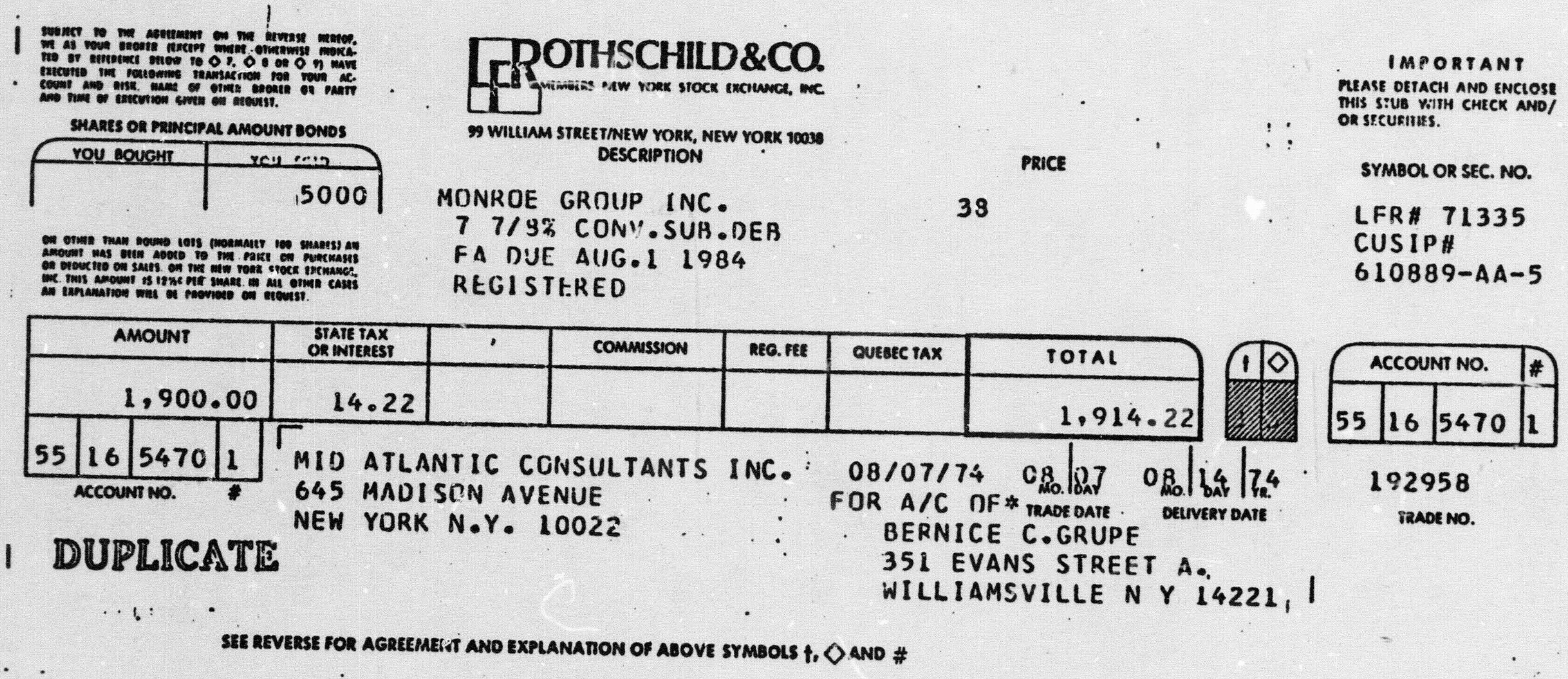
TRADE NO. 191942

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 12

EXHIBIT 13 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 8/7/74



SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

ROTHSCHILD&CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.
99 WILLIAM STREET/NEW YORK, NEW YORK 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD	DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
	5000	MONROE GROUP INC. 7 7/8% CONV.SUB.DEB FA DUE AUG.1 1984 REGISTERED	38	LFR# 71335 CUSIP# 610889-AA-5

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES. ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST	,	COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
1,900.00	14.22					1,914.22	▨	▨

ACCOUNT NO.			#
55	16	5470	1

ACCOUNT NO.			#	TRADE NO.
55	16	5470	1	192958

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

08/07/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

	MO.	DAY	YR.
TRADE DATE	08	07	
DELIVERY DATE	08	14	74

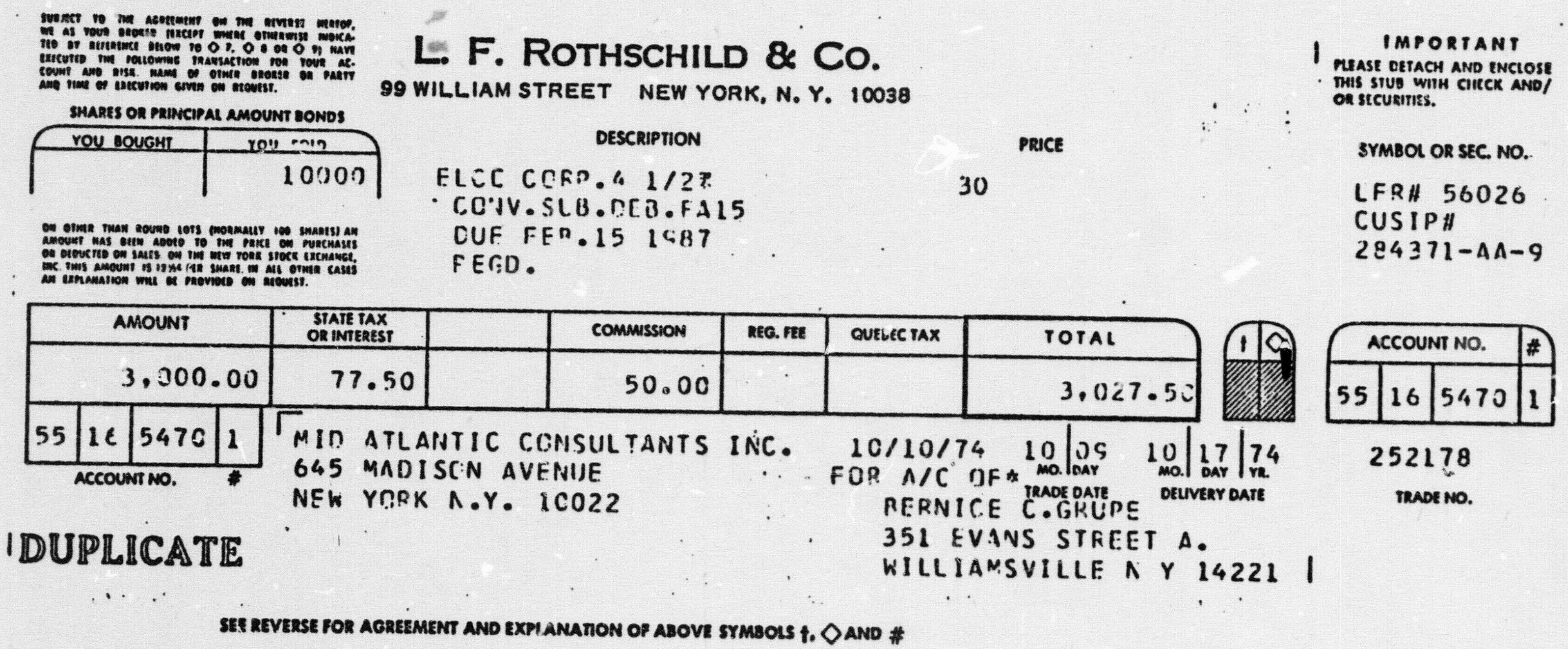
DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 13

A-56

EXHIBIT 14 TO REQUEST - ROTHSCHILD BUY/SELL TRANSACTIONS STATEMENT 10/10/74



SUBJECT TO THE AGREEMENT ON THE REVERSE HEREOF, WE AS YOUR BROKER (EXCEPT WHERE OTHERWISE INDICATED BY REFERENCE BELOW TO ◇ 7, ◇ 8 OR ◇ 9) HAVE EXECUTED THE FOLLOWING TRANSACTION FOR YOUR ACCOUNT AND RISK. NAME OF OTHER BROKER OR PARTY AND TIME OF EXECUTION GIVEN ON REQUEST.

L. F. ROTHSCHILD & CO.
99 WILLIAM STREET NEW YORK, N. Y. 10038

IMPORTANT
PLEASE DETACH AND ENCLOSE THIS STUB WITH CHECK AND/OR SECURITIES.

SHARES OR PRINCIPAL AMOUNT BONDS

YOU BOUGHT	YOU SOLD	DESCRIPTION	PRICE	SYMBOL OR SEC. NO.
	10000	ELCC CORP.4 1/2% CONV.SUB.DEB.FA15 DUE FEB.15 1987 FEGD.	30	LFR# 56026 CUSIP# 284371-AA-9

ON OTHER THAN ROUND LOTS (NORMALLY 100 SHARES) AN AMOUNT HAS BEEN ADDED TO THE PRICE ON PURCHASES OR DEDUCTED ON SALES ON THE NEW YORK STOCK EXCHANGE, INC. THIS AMOUNT IS 12½¢ PER SHARE. IN ALL OTHER CASES AN EXPLANATION WILL BE PROVIDED ON REQUEST.

AMOUNT	STATE TAX OR INTEREST		COMMISSION	REG. FEE	QUEBEC TAX	TOTAL	†	◇
3,000.00	77.50		50.00			3,027.50	▨	▨

ACCOUNT NO.			#
55	16	5470	1

55 16 5470 1
ACCOUNT NO. #

MID ATLANTIC CONSULTANTS INC.
645 MADISON AVENUE
NEW YORK N.Y. 10022

10/10/74
FOR A/C OF*
BERNICE C.GRUPE
351 EVANS STREET A.
WILLIAMSVILLE N Y 14221

TRADE DATE: 10 (MO.) 09 (DAY)

DELIVERY DATE: 10 (MO.) 17 (DAY) 74 (YR.)

TRADE NO. 252178

DUPLICATE

SEE REVERSE FOR AGREEMENT AND EXPLANATION OF ABOVE SYMBOLS †, ◇ AND #

EXHIBIT 14

EXHIBIT 15 TO REQUEST - STANDARD & POOR'S BOND RATINGS

STANDARD & POOR'S BOND RATINGS

To provide more detailed indications of credit quality, our traditional bond letter ratings may be modified by the addition of a plus or a minus sign, when appropriate, to show relative standing within the major rating categories, the only exceptions being in the "AAA" – Prime Grade category and the lesser categories below "BB"

CORPORATE BONDS

BANK QUALITY BONDS – Under present commercial bank regulations bonds rated in the top four categories (AAA, AA, A, BBB or their equivalent) generally are regarded as eligible for bank investment.

AAA Bonds rated AAA are highest grade obligations. They possess the ultimate degree of protection as to principal and interest. Marketwise they move with interest rates, and hence provide the maximum safety on all counts.

AA Bonds rated AA also qualify as high grade obligations, and in the majority of instances differ from AAA issues only in small degree. Here, too, prices move with the long term money market.

A Bonds rated A are regarded as upper medium grade. They have considerable investment strength but are not entirely free from adverse effects of changes in economic and trade conditions. Interest and principal are regarded as safe. They predominantly reflect money rates in their market behavior, but to some extent, also economic conditions.

BBB The BBB, or medium grade category is borderline between definitely sound obligations and those where the speculative element begins to predominate. These bonds have adequate asset coverage and normally are protected by satisfactory earnings. Their susceptibility to changing conditions, particularly to depressions, necessitates constant watching. Marketwise, the bonds are more responsive to business and trade conditions than to interest rates. This group is the lowest which qualifies for commercial bank investment.

BB Bonds given a BB rating are regarded as lower medium grade. They have only minor investment characteristics. In the case of utilities, interest is earned consistently but by narrow margins. In the case of other types of obligors, charges are earned on average by a fair margin, but in poor periods deficit operations are possible.

B Bonds rated as low as B are speculative. Payment of interest cannot be assured under difficult economic conditions.

CCC-CC Bonds rated CCC and CC are outright speculations, with the lower rating denoting the more speculative. Interest is paid, but continuation is questionable in periods of poor trade conditions. In the case of CC ratings the bonds may be on an income basis and the payment may be small.

C The rating of C is reserved for income bonds on which no interest is being paid.

DDD-D All bonds rated DDD, DD and D are in default, with the rating indicating the relative salvage value.

NR – Not Rated.

Canadian corporate bonds are rated on the same basis as American corporate issues. The ratings measure the intrinsic value of the bonds, but they do not take into account exchange and other uncertainties.

MUNICIPAL BONDS

Standard & Poor's Municipal Bond Ratings cover obligations of states and political subdivisions. Ratings are assigned to general obligation and revenue bonds. General obligation bonds are usually secured by all resources available to the municipality and the factors outlined in the rating definitions below are weighed in determining the rating. Because revenue bonds in general are payable from specifically pledged revenues, the essential element in the security for a revenue bond is the quantity and quality of the pledged revenues available to pay debt service. Although an appraisal of most of the same factors that bear on the quality of general obligation bond credit is usually appropriate in the rating analysis of a revenue bond, other factors are important, including particularly the competitive position of the municipal enterprise under review and the basic security convenants.

"Although a rating reflects our judgment as to the issuer's capacity for the timely payment of debt service, in certain instances it may also reflect a mechanism or procedure for an assured and prompt cure of a default should one occur, i.e., an insurance program, Federal or state guaranty or the automatic withholding and use of state aid to pay the defaulted debt service."

AAA-Prime – These are obligations of the highest quality. They have the strongest capacity for timely payment of debt service.

General Obligation Bonds – In a period of economic stress, the issuers will suffer the smallest declines in income and will be least susceptible to autonomous decline. Debt burden is moderate. A strong revenue structure appears more than adequate to meet future expenditure requirements. Quality of management appears superior.

Revenue Bonds – Debt service coverage has been and is expected to remain substantial. Stability of the pledged revenues is also exceptionally strong, due to the competitive position of the municipal enterprise or to the nature of the revenues. Basic security provisions (including rate covenant, earnings test for issuance of additional bonds, debt service reserve requirements) are rigorous. There is evidence of superior management.

AA-High Grade – The investment characteristics of general obligation and revenue bonds in this group are only slightly less marked than those of the prime quality issues. Bonds rate "AA" have the second strongest capacity for payment of debt service.

A-Good Grade – Principal and interest payments on bonds in this category are regarded as safe. This rating describes the third strongest capacity for payment of debt service. It differs from the two higher ratings because:

General Obligation Bonds – There is some weakness, either in the local economic base, in debt burden, in the balance between revenues and expenditures, or in quality of management. Under certain adverse circumstances, *any one such weakness* might impair the ability of the issuer to meet debt obligations at some future date.

Revenue Bonds – Debt service coverage is good, but not exceptional. Stability of the pledged revenues could show some variations because of increased competition or economic influences on revenues. Basic security provisions, while satisfactory, are less stringent. Management performance appears adequate.

EXHIBIT 15

EXHIBIT 16 TO REQUEST - MOODY'S BOND RECORD

MOODY'S BOND RECORD

Explanation and Key to Corporate Bond Ratings, Including Convertible Issues, and Industrial Revenue Bonds
(For Rating Key and Explanation of Moody's Municipal Bond ratings, see Table of Contents)

eword: Moody's Bond Record covers over 19,000 issues and situations ich approximately 4,600 comprising the first section, are treated in affording the user at a glance the essential facts relating to market on and statistical background.

of Bond: Name of corporation, together with coupon and date or of maturity are given. (Where title is printed in **bold face type** such ny has convertible debt securities outstanding. Listed issues are ed by identifying symbol. In the case of domestic municipals, rai- re applicable to all general obligation bonds of the unit named unless ise specified.

rest Dates: Interest dates and date of the month of maturity given. *ned letter denotes the final month of maturity.*

stered Bonds: Bonds issued only in fully registered form are indi- with the letter (r).

ults: In cases of interest or principal default, the date together ppropriate symbol is usually shown in interest column.

Price: The call price as of the date of this publication is given cases possible, and will be adjusted to the correct call price when hange becomes effective. Symbol (▲) after call price indicates price ect to change.

dy's Rating: Moody's Rating is given to all issues in this publication sufficient data are available. A discussion and explanation of 's ratings will be found on page 2.

ations: Quotations shown are as follows:

ted Issues: Quotations for listed issues represent actual sale prices as near as possible to the end of the month preceding date of publication. Where no recent transaction is reported, the latest bid and asked prices are given.

isted Corporate Issues: Quotations shown represents the approximate spread between bid *and* asked prices for latest available date preceding date of publication. Where *bid prices only* are available, the average of such bids is given. Where *asked prices only* are available, the average of them is given.

ial Issues: Where each maturity is not quoted separately, the quotation shown is usually for the average maturity.

adian Issues: Issues payable only in Canadian funds and so quoted are indicated with an asterisk (*) in the "Current Price" column. ations are obtained from sources which we believe reliable but re not guaranteed. In the case of unlisted issues, quotations do not t to be a record of firm bids or offers nor do they necessarily ent actual transactions.

Price Range: The high and low sale for all *listed* issues is as near as possible to the end of the month. The range for unlisted represents high and low bid prices, based on reliable quotation s.

73 Price Range: The high and low sale price for all *listed* issues been taken from records for that period. In the case of unlisted the high and low bid prices are used. For bonds issued since 1946, nge covers only the period since issuance.

to Maturity: The yield to maturity is shown on all bonds paying r interest. Where sale price is not available, the yield is computed bid price for valuation purposes.

ernment Bank Classification: This column shows into which class, *oses of bank examination*, various bonds appear to fall according to the nd regulations of the several Governmental Supervisory agencies, cribed on page 2. The symbols used for this purpose are: (X) mean- at this bond will evidently be considered by the Governmental Su- ory agencies (according to Moody's interpretation of their rules) as ing to Group I. (Y) meaning that this bond will evidently be consid- y the Governmental Supervisory agencies (according to Moody's in- ation of their rules) as belonging to Group II. (Z) meaning that for another of several reasons this bond will evidently be considered Governmental Supervisory agencies (according to Moody's inter- on of their rules) as belonging to Group III because of default as cipal or interest; or failure to pay interest on the due date regard- the grace period; or, in the case of an income bond, failure to pay l coupon (whether contingent or not) promptly on the due date or in full any past interest accumulations, or where a compromise nent involving a reduction of interest or payment of interest in scrip other securities, has been arranged. The symbol (?) means bank cation uncertain as applicability of the rulings of the Supervisory es is not clear. The symbol (Q) means bank classification is un- to Moody's because it is not determined by ratings.

unt Outstanding: Amount outstanding shown is after deducting pledged or reacquired and may be regarded as amount publicly

ing Fund Provision: Where the bond indenture contains a sinking rovision, it has been indicated by the word "Yes" in this column. sinking fund is provided the word "No" is shown. In other cases "Alt" meaning alternate is shown, the indenture has a provision yments which under certain conditions may be used to retire bonds.

Status: Bonds legal for savings banks are designated by numerals:
1. N. Y. 2. Mass. 3. N. J. 4. Conn. 5. N. H.

ral Tax Status: The following symbols are used to show Federal atus:

ompany pays normal Federal Income Tax not exceeding 2%. Where the company has agreed to pay the tax to a smaller amount han 2%, the figure shown indicates the rate assumed.

ederal income tax not paid or refunded. This symbol is used both the case of bonds which contain no provision for payment or efund of Federal taxes and in the case of bonds issued or extended n or after January 1, 1934, with tax free covenants. In latter case, ompany is not required to withhold any Federal taxes when bonds re held by citizens or residents of the United States.

oreign issue. Federal Income Tax neither paid nor refunded.

nt Assets and Current Liabilities: Current assets and current lia- are shown as of the date of the latest balance sheet available.

Charges Earned: This item indicates the coverage of all interest , debt discount and expense and in railroad issues rent for lease is included. This coverage is shown for each company as a whole, ess of priority. The three-year record of times charges earned is in most cases where the information is available except that guar- and assumed obligations are so noted for reference to item on ng or guarantor company. Where possible, coverage is computed deducting Federal income tax.

General Information and Remarks: In many issues, notably foreign governmental bonds, latest developments are noted in lieu of statistical data furnished on corporate items.

MOODY'S BOND RATINGS

Purpose: The system of rating securities was originated by John Moody in 1909.

The purpose of Moody's Ratings is to provide the investors with a simple system of gradation by which the relative investment qualities of bonds may be noted.

Rating Symbols: Gradations of investment quality are indicated by rating symbols, each symbol representing a group in which the quality characteristics are broadly the same. There are nine symbols as shown below, from that used to designate least investment risk (i.e., highest investment quality) to that denoting greatest investment risk (i.e., lowest investment quality):

Aaa Aa A Baa Ba B Caa Ca C

For explanation of municipal rating symbols, in particular the A 1 and Baa 1 groups see page 79.

Absence of Rating: Occasionally no rating is assigned or a rating is withdrawn or cancelled. This may occur if new circumstances arise, the effects of which are not satisfactorily analyzable, if there is no longer available reasonably up to date data to permit a judgment to be formed, if a bond is called for redemption, or for other reasons.

Where no rating has been assigned or where a rating has been cancelled, that fact alone must not in any way be taken as a reflection on the quality of a bond.

Where no rating has been assigned to a bond the reason could be one of the following:

1. The bond belongs to a group of securities which are not rated as a matter of policy, viz., real estate bonds, obligations of investment trusts and banks, and currently, bonds payable in currencies other than United States dollars.

2. Where ratings have been requested for privately placed bond issues, such ratings will not be published. No ratings are assigned or may be maintained where public interest in any issue is minimal, or in any situation where it would be difficult to maintain constant scrutiny of the issue because of lack of essential data, or because of reduced size and limited after marketability.

3. Bonds are not rated in the absence of data deemed to be essential for a sound judgment on the investment quality of the issues.

Changes in Rating: The quality of most bonds is not fixed and steady over a period of time, but tends to undergo change. For this reason changes in ratings occur so as to reflect these variations in the intrinsic position of individual bonds.

A change in rating may thus occur at any time in the case of an individual issue. Such rating change should serve notice that Moody's observes some alteration in the investment risks of the bond or that the previous rating did not fully reflect the quality of the bond as now seen. While because of their very nature, changes are to be expected more frequently among bonds of lower ratings than among bonds of higher ratings, nevertheless the user of bond ratings should keep close and constant check on all ratings—both high and low ratings—thereby to be able to note promptly any signs of change in investment status which may occur.

Limitations to Uses of Ratings: Bonds carrying the same rating are not claimed to be of absolutely equal quality. In a broad sense they are alike in position but since there are only nine rating classes used in grading thousands of bonds it follows that the symbols cannot reflect the fine shadings of risks which actually exist. Therefore, it should be evident to the user of ratings that two bonds identically rated are unlikely to be precisely identical in investment quality.

As ratings are designed exclusively for the purpose of grading according to their investment qualities, they should not be used al a basis for investment operations. For example, they have no value in forecasting the direction of future movements of market prices. Market price movements in bonds are influenced not only by the quality of individual issues but also by changes in money rates and general economic trends, as well as by the length of maturity, etc. During its life even the best quality bond may have wide price movements, although its high investment status remains unchanged.

The matter of market price has no bearing whatsoever on the determination of a rating and ratings themselves are not to be construed as a recommendation with respect to "attractiveness." The attractiveness of a given bond may depend on its yield, its maturity date or on other factors for which the investor may search, as well as on its investment quality which is the only characteristic to which the rating refers.

Since ratings involve a judgment about the future, on the one hand, and since they are used by investors as a means of protection, on the other, the effort is made when assigning ratings, to look at "worst" potentialities in the "visible" future rather than solely at the past record and the status of the present. Investors using the rating should not, therefore, expect to find in them a reflection of statistical factors alone. They are not statistical ratings but an appraisal of long term risks, such appraisal giving recognition to many non-statistical factors.

Though ratings may be used by the banking authorities to determine legal eligibility of corporate and municipal revenue bonds for bank purchase, etc. (see page 4), Moody's Ratings are not made with these bank regulations in view. Moody's Investors Service, Inc. own judgment as to desirability or non-desirability of a bond for bank investment purposes is not indicated by Moody's Ratings.

Moody's Ratings represent the mature opinion of Moody's Investors Service, Inc. as to the relative investment classification of bonds. As such they should be used in conjunction with the description and statistics appearing in Moody's Manuals. Reference should be made to these statements for information regarding the issuer. Moody's Ratings are not commercial credit ratings. In no case is default or receivership, to be imputed unless expressly so stated in the Manual.

KEY TO MOODY'S CORPORATE RATINGS

Aaa

Bonds which are rated Aaa are judged to be of the best quality. They carry the smallest degree of investment risk and are generally referred to as "gilt edge." Interest payments are protected by a large or by an exceptionally stable margin and principal is secure. While the various protective elements are likely to change, such changes as can be visualized are most unlikely to impair the fundamentally strong position of such issues.

EXHIBIT 16

Aa

onds which are rated Aa are judged to be of high quality by all stand- s. Together with the Aaa group they comprise what are generally wn as high grade bonds. They are rated lower than the best bonds ause margins of protection may not be as large as in Aaa securities or tuation of protective elements may be of greater amplitude or there be other elements present which make the long term risks appear ewhat larger than in Aaa securities.

A

onds which are rated A possess many favorable investment attributes are to be considered as upper medium grade obligations. Factors ng security to principal and interest are considered adequate but ents may be present which suggest a susceptibility to impairment time in the future.

Baa

onds which are rated Baa are considered as medium grade obli- ons, i.e., they are neither highly protected nor poorly secured. Interest ments and principal security appear adequate for the present but ain protective elements may be lacking or may be characteristically liable over any great length of time. Such bonds lack outstanding in- ment characteristics and in fact have speculative characteristics as

Ba

Bonds which are rated Ba are judged to have speculative elements; their future cannot be considered as well assured. Often the protection of interest and principal payments may be very moderate and thereby not well safeguarded during both good and bad times over the future. Uncertainty of position characterizes bonds in this class.

B

Bonds which are rated B generally lack characteristics of the desirable investment. Assurance of interest and principal payments or of maintenance of other terms of the contract over any long period of time may be small.

Caa

Bonds which are rated Caa are of poor standing. Such issues may be in default or there may be present elements of danger with respect to principal or interest.

Ca

Bonds which are rated Ca represent obligations which are speculative in a high degree. Such issues are often in default or have other marked shortcomings.

C

Bonds which are rated C are the lowest rated class of bonds and issues so rated can be regarded as having extremely poor prospects of ever attaining any real investment standing.

BANK EXAMINATION PROCEDURE

e Comptroller of the Currency, The Federal Deposit Insurance Cor- tion, The Board of Governors of the Federal Reserve System and the utive Committee of the National Association of Supervisors of State s, jointly issued effective July 15, 1949, changes in the bank examina- and reporting procedure which had been followed by the Supervisory cies since July, 1938. The bank examination procedure, as revised 15, 1949, is as follows:

ne **Classification of Assets in Bank Examination:** The present captions e classification units, namely, 'I' 'II' 'III' and 'IV' are to be abandoned, ne classification units hereafter will be designated as 'Substandard' tful' and 'Loss'. The term 'Substandard' will be defined as follows:

Book assets or portions thereof not classified as doubtful or loss and hich involve more than a normal risk due to the financial condition unfavorable record of the obligor, insufficiency of security, or other ctors noted in the examiner's comments. These assets should be ven special and corrective attention, for example, by obtaining itable reductions in amount, additional security, more complete nancial data concerning the obligor's condition, or other such action the specific circumstances may require.

esent practice will be continued under which the totals of the three fications are included in the recapitulation or summary of ex- rs' classifications.

fty per cent of the total of 'Doubtful' and all of 'Loss' will be de- d in computing the net sound capital of the bank. Amounts classified should be promptly charged off.

e **Appraisal of Bonds in Bank Examinations:** Neither appreciation epreciation in Group I securities will be taken into account in figur- et sound capital of the bank. However, this policy is intended to to recognized sound investment practices of banks, and is not in- d to apply to undue concentrations in securities other than U. S. Government issues, nor to other cases where the condition of the portfolio required special treatment by the supervisory agency or agencies concerned.

> Group I securities are marketable obligations in which the investment characteristics are not distinctly or predominantly speculative. This group includes general market obligations in the four highest grades and unrated securities of equivalent value.

"The securities in Group II will be valued at the market price and fifty per cent of the net depreciation will be deducted in computing the net sound capital.

> Group II securities are those in which the investment characteristics are distinctly or predominantly speculative. This group includes general market obligations in grades below the four highest, and unrated securities of equivalent value.

"Present practice will be continued under which net depreciation in the securities in Group III and Group IV are classified as loss.

> Group III securities: Securities in default.
> Group IV securities: Stocks.

"Present practice will be continued under which premiums on securities purchased at a premium must be amortized.

"Present practice of listing securities and showing their book value will be continued.

"Present practice will be continued under which the establishment and maintenance of adequate reserves, including reserves against the securities account, are encouraged.

"Present practice will be continued under which speculation in securities is criticized and penalized.

"**The Treatment of Securities Profits in Bank Examinations:** Until losses have been written off and adequate reserves established the use of profits from the sale of securities for any purpose other than those, will not be approved."

INVESTMENT SECURITIES REGULATION OF THE COMPTROLLER OF THE CURRENCY

(As Revised April 8, 1971)

uthority.
cope and application.
initions.
ype I securities; standards for authorized transactions.
ypes II and III securities; purchase standards.
ype II securities; authority to deal in and underwrite.
ypes II and III securities; limitations on holdings.
rudent banking judgment; credit information required.
equests for rulings.
onvertible securities.
nortization of premiums.
ceptions.

ority: The provisions of this Part 1 issued under R.S. 324 et seq., as ed, Paragraph Seventh of R.S. 5136 as amended; 12 U.S.C. 1 et seq., ess otherwise noted.

thority.

part is issued by the Comptroller of the Currency under the authority of the national banking laws, 12 U.S.C. 1 et seq der specific authority contained in paragraph Seventh of 12 U.S.C. Comptroller of the Currency is charged by the national banking ith the execution of all laws of the United States relating to the ation, operation, regulation and supervision of national banks and icular with the execution of 12 U.S.C. 24 which sets forth the te powers of national banks. This part interprets and applies ph Seventh of 12 U.S.C. 24 to provide for its due execution and proper regulation and supervision of the operations of national Paragraph Seventh of 12 U.S.C. 24 also specifically provides for nptroller of the Currency to prescribe by regulation (a) limitations trictions on the purchase of investment securities by a national or its own account and (b) further definition of the term ment securities."

pe and application.

part applies to the purchase, sale, dealing in, underwriting, and of investment securities by national banks, banks located in the of Columbia, and by state banks which are members of the Reserve System. It may also apply to a limited extent to others in the banking business. The Comptroller of the Currency is by various provisions contained in Chapter 1 of Title 26 of the of Columbia Code with the supervision of banks located in the of Columbia. State banks which are members of the Federal System are, under 12 U.S.C. 335, subject to the same limitations ditions with respect to the purchasing, selling, underwriting, and of investment securities and stock as are applicable in the case of banks under paragraph Seventh of 12 U.S.C. 24. Dealers in s are prohibited by 12 U.S.C. 378 from engaging in banking business. Section 378 specifically provides, however, that it does not prohibit national banks or state banks or trust companies (whether or not members of the Federal Reserve System) or other financial institutions or private bankers from dealing in, underwriting, purchasing and selling investment securities to the extent permitted to national banking associations by the provisions of 12 U.S.C. 24.

§1.3 Definitions.

(a) The term "bank" includes national banks, banks located in the District of Columbia, and state banks which are members of the Federal Reserve System.

(b) The term "investment security" means a marketable obligation in the form of a bond, note or debenture which is commonly regarded as an investment security. It does not include investments which are predominantly speculative in nature.

(c) The term "Type I security" means a security which a bank may deal in, underwrite, purchase and sell for its own account without limitation. These include obligations of the United States, general obligations of any State of the United States or any political subdivision thereof and other obligations listed in paragraph Seventh of U.S.C. 24.

(d) The term "Type II security" means a security which a bank may deal in, underwrite, purchase and sell for its own account, subject to a 10 percent limitation. These include obligations of the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank and the Tennessee Valley Authority, and obligations issued by any State or political subdivision or any agency of a State or a political subdivision for housing, university or dormitory purposes.

(e) The term "Type III security" means a security which a bank may purchase and sell for its own account, subject to a 10 percent limitation, but may neither deal in nor underwrite.

(f) The term "political subdivision of any State" includes a county, city, town or other municipal corporation, a public authority, and generally any publicly owned entity which is an instrumentality of the State or of a municipal corporation.

(g) The phase "general obligation of any State or any political subdivision thereof" means an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation. It includes an obligation payable from a special fund or by an obligor not possessing general powers of taxation when an obligor possessing general powers of taxation, including property taxation, has unconditionally promised to make payments into the fund or otherwise available for the payment of the obligation of amounts which (together with any other funds available for the purpose) will be sufficient to provide for all required payments in connection with the obligation.

§1.4 Type I securities: standards for authorized transactions.

Type I securities are not subject to the limitations and restrictions contained in 12 U.S.C. 24 or in this Part other than §§1.3(c), 1.3(g), 1.4,

EXHIBIT 16 p. 2

EXHIBIT 17 TO REQUEST - NOTICE TO HOLDERS OF ELCO CORPORATION

Notice to Holders of
ELCO CORPORATION
4½% Convertible Subordinated Debentures Due February 15, 1987

NOTICE IS HEREBY GIVEN that, at a Special Meeting of the Stockholders of Elco Corporation ("Elco") to be held on the 16th day of August, 1974 and any adjournments thereof, the holders of record of Elco Common Stock at the close of business on the 15th day of July, 1974 (the "Record Date") will be asked to vote on a Plan of Merger (the "Plan") providing for the merger (the "Merger") of Gwelco, Inc., a subsidiary of Gulf & Western Industries, Inc., into Elco, with Elco being the surviving corporation.

The Plan provides, among other things, that if the Plan is approved at the Special Meeting, (a) holders of Elco Common Stock will receive $8.50 in cash in exchange for each share of Elco Common Stock and (b) in accordance with the provisions of the original indenture dated February 15, 1967, as heretofore amended (the "Indenture"), a supplemental indenture will be executed which will provide that each holder of Elco 4½% Convertible Subordinated Debentures due February 15, 1987 (the "Debentures") will have—in lieu of the pre-Merger right to convert his Debentures into Elco Common Stock—the right to convert each $1,000 principal amount of Debentures held by him into $252 in cash, the amount he would have received had he converted his Debentures into shares of Elco Common Stock prior to consummation of the Merger. Of course, holders of Debentures after the Merger will continue to have the same rights as they had prior thereto including their rights as to the receipt of interest and principal, but their right to convert the Debentures shall be modified as indicated above. Elco shall continue to have the same rights which it had prior to the Merger, including the right to redeem the Debentures. Notwithstanding the Merger, the holders of Debentures will continue to be entitled to look only to Elco for payment of the interest and principal with respect to the Debentures.

On June 28, 1974 each $1,000 principal amount of Debentures had a market value of $410 based on the mean between the bid and asked prices in the over-the-counter market on that day. Prior to consummation of the Merger each $1,000 principal amount of Debentures may be converted into 29 shares of Elco Common Stock which had an aggregate market value of $228.38 on June 28, 1974 (based on the closing price per share on the American Stock Exchange on that date) plus a cash payment equal to .647 of the last reported sale price per share of Elco Common Stock on the American Stock Exchange on the last business day prior to the date of conversion (in respect of the .647 fraction of a share of Elco Common Stock resulting from such conversion). If conversion occurred on June 28, 1974 such cash payment would have been $5.10.

Holders of Debentures will have no right to vote on the Merger, except that if a Debenture holder converts his Debentures on or prior to the Record Date, he may vote the shares of Elco Common Stock issued upon such conversion in person, or by proxy, for or against the Merger, in the same manner as other Elco shareholders.

The following table shows, for the calendar quarters indicated, (a) the high and low bid prices per $100 principal amount of Debentures in the over-the-counter market as reported by the National Quotation Bureau and (b) the high and low sales prices per share of Elco Common Stock on the American Stock Exchange as reported by The Wall Street Journal:

Calendar Quarter	$100 Principal Amount of Debentures (1)				Share of Common Stock	
	Bid		Asked			
	High	Low	High	Low	High	Low
Third Quarter, 1973	45	37	50	43	5½	3⅜
Fourth Quarter, 1973	45	37	50	42	6¾	3½
First Quarter, 1974	49	39	53	42	8	3⅝
Second Quarter, 1974	44	38	52	43	8	7¾

---

(1) Elco Debentures are traded only in $1,000 principal amounts or larger; however, prices are quoted in terms of $100 principal amount of Debentures in accordance with the customary practice of the financial community. Prices quoted do not include retail mark up, mark down or commissions and do not necessarily reflect actual transactions.

Dated: July 3, 1974
Jenkintown, Pennsylvania 19046

EXHIBIT 17

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

BERNICE C. GRUPE,

Plaintiff,

-against-

JOHN LAMULA INVESTORS, INC. and
JOHN J. LAMULA,

Defendants.

---x

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

75 Civ. 2083

(M.E.F.)

Defendants, as and for their answers to Plaintiff's first request for admissions, allege as follows:

1. Admit each and every allegation in Demands "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30", "33", "37", "38", "39" and "40".

2. Denies knowledge or information sufficient to form a belief as to each and every allegation in Demand "14".

3.a. Denies knowledge or information sufficient to form a belief as to each and every allegation in Demand "15(a)", except admits that the third column is equivalent to the first column less the second column without in any way admitting what ~~any of those~~ the 2nd & 3rd columns of figures represent;

b. Denies each and every allegation in Demand "15(b)" except admits that the third column equals the first column less the second column and also admits the validity of the first and second columns of figures but denies that the third column is accurate insofar as those figures are delineated as defendants' profit since it is not clear whether this is a net profit or gross profit.

PRE-TRIAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

BERNICE C. GRUPE, : 75 Civ. 2083 (GLG)

Plaintiff, :

-against- : **PRE-TRIAL ORDER**

JOHN LAMULA INVESTORS, INC. :
and JOHN J. LAMULA,
:
Defendants.
:
- x

Appearances having been made, through their respective counsel, by plaintiff and both defendants at pre-trial conferences on December 18, 1975, February 17, 1976, March 1, 1976 and April 26, 1976, all held pursuant to Rule 16 of the Federal Rules of Civil Procedure, the following actions were taken.

I The pleadings were agreed to be deemed amended in accordance with the issues in this action as framed in paragraph IX hereof.

II The parties agreed that the trial of this action should be based upon this order and upon the pleadings

4. Denies each and every allegation in Demand "31" and respectfully suggests that Exhibit 41 consisted solely of a letter dated July 19, 1974 and therefore Defendants cannot admit the allegations set forth in this Demand.

5. Defendants admit subdivision a and b of Demand "32" and denies subdivision c and d thereof.

6. Defendants cannot with accuracy state that Defendant JOHN LAMULA met with Plaintiff only on the dates set forth in Demand "34".

7. Defendants at this time cannot admit the allegations in Demand "35" but will, at least ten (10) days prior to the trial herein, remit to Plaintiff's counsel a further statement regarding this Demand.

8. Defendants at this time cannot admit the allegations in Demand "36" but will, at least ten (10) days prior to the trial herein, remit to Plaintiff's counsel a further statement regarding this Demand. It is agreed that Demand "36" is as of May 23, 1974.

DATED: New York, New York
May 3, 1976

BARATTA & GOLDSTEIN

BY: /S/
A Member of the Firm
Attorneys for Defendants
1250 Broadway - Suite 3003
New York, New York 10001
Tel.: (212) 736-8088

TO: SILBERFELD, DANZIGER & BANGSER
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10017
Tel: (212) 889-8400

as amended; and no issues raised by the pleadings are deemed abandoned except the first affirmative defense alleged by defendants in their answer, to wit, statute of frauds, which such defense is hereby expressly abandoned.

III (a) The parties have stipulated that the facts set forth below are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues):

1. This action arises out of transactions in and a course of dealings for the brokerage account of plaintiff with defendant John Lamula Investors Inc. ("JLI"). All of the transactions in the account occurred between May 20, 1974 and July 17, 1974.

2. All discussions which plaintiff had respecting the transactions in her account with defendant were had either with defendant John J. Lamula ("Lamula"), or with Mini Vena ("Vena"). At all times from January 1, 1974 to and including August 31, 1974, (a) defendant Lamula was president and director of defendant JLI, and the owner of a majority of its stock; and (b) Vena was an employee of defendant JLI, its corporate secretary, and personal secretary to defendant Lamula.

3. Defendants are registered with the National Association of Securities Dealers ("NASD"). Prior to Sept. 1974, neither was registered as member, associate member or otherwise with the New York Stock Exchange, the American Stock Exchange or any other securities exchange.

4. Defendant Lamula has been a principal in defendant JLI since its organization in 1957. His training in investment commenced in the 1930s, and includes (among other things) extensive transactions in the over-the-counter market, in particular with convertible subordinated debentures.

5. Defendant Lamula was active in an insurance business of which he was a principal until about eight years ago. He served in New York State government as a member of the New York State Assembly, as Deputy Clerk, as Assistant to the Speaker of the Assembly, and as Assistant to the Majority Leader of the Senate. Between March and August of 1974, and at other times prior thereto, he held the position of part-time consultant to the Finance Committee of the New York State Senate.

6. In 1974, plaintiff was 57 or 58 years old. She

had been married twice; and both marriages had terminated in divorce. Her second marriage to George B. Grupe, took place on December 1, 1967. Plaintiff and Mr. Grupe separated in July 1973, and thereafter executed a separation agreement dated in July, 1973. On December 13, 1974 plaintiff and Mr. Grupe were divorced.

7. Plaintiff has three children by her first marriage, all sons, all of whom were, at all times since March 1974, adult and not financially dependent upon plaintiff. One of plaintiff's sons, Richard E. Clark, was at all times between March and September of 1974 an attorney at law practicing in New Jersey.

8. Defendant Lamula was introduced to plaintiff by a mutual friend, Dorothy Emerson ("Emerson"). Their first meeting took place in March of 1974 in Emerson's suite at the DeWitt Clinton Hotel in Albany, New York. At such time, both plaintiff and Emerson were employees of the New York State Senate. Other meetings occurred between plaintiff and defendant Lamula in March, April and May of 1974 at the said suite, at all of which Emerson was also present.

9. In all of the transactions effected by defendant for the account of plaintiff, defendant JLI acted as principal and dealer, selling debentures and (in one instance) selling and buying stock, from or for its own inventory. Defendant JLI was a market maker with regard to all convertible debentures sold by it to plaintiff at the time of such transactions. All securities purchased by plaintiff from defendants were first recommended by defendant Lamula to plaintiff.

10. The following tabulation accurately sets forth the dates, quantity, description, price, amount, accrued interest paid, and aggregate amount of charge to plaintiff, with respect to all convertible debentures sold by defendants to plaintiff.

(a) On or about May 22 or May 23, 1974 as trade date:

Quantity	Description	Price	Amount	Interest	Net Amounts
$30,000	Allegheny Beverage Corp.6-1/4% of 1988 F & A 1	59	$17,700	$625.00	$18,325.00
$20,000	D.W.G. Corp. 5-1/2% of 1994 J & J 15	54	10,800	415.56	11,215.56
$20,000	Applied Data Research 6% of 1983 M & N 15	65	13,000	53.33	13,053.33

$20,000	Arwood Corp. 4-5/8% of 1987 J & D 15	50	10,000	426.53	10,426.53
$20,000	Inflight Services 6% of 1989 M & S 1	41	8,200	300.00	8,500.00
$ 5,000	Knight Industries 7-3/8% of 1983 J & D 1	59	2,950		2,950.00
$20,000	Lincoln Mortgage Investors 8% of 1990 M & S 15	56	11,200	337.78	11,537.78
$15,000	Nortek Inc. 6% of 1983 J & D 15	53	7,950	415.00	8,365.00
$15,000	Technical Operations 8% of 1985 F & A 1	79	11,850	400.00	12,250.00
$ 5,000	Monroe Group 7-7/8% of 1984 F & A 1	61	3,050	131.25	3,181.25

(b) On or about June 3, 1974 as trade date:

Quantity	Description	Price	Amount	Interest	Net Amounts
$ 5,000	Technical Operations 8% of 1985 F & A 1	79	$ 3,850	$286.67	$ 4,136.67

(c) On or about July 10, 1974 as trade date:

$10,000	Elco Corp. 4-1/2% of 1987 F & A 15	45	4,500	152.50	4,752.50

11. (a) With regard to convertible debentures of Allegheny Beverage Corp., JLI engaged in the following transactions in its trading account, and no others, between April 2, 1974 and the sale thereof to plaintiff on May 31, 1974:

Omitted

Settlement Date	Face amount of debentures traded	Price per debenture
4/2/74	Bought $20,000	$490.00
4/4/74	Bought $16,000	$480.00
4/10/74	Bought $10,000	$470.00
4/19/74	Sold $35,000	$480.50
5/29/74	Bought $20,000	$510.00

(b) Immediately preceding the settlement of the sale to plaintiff of $30,000 Allegheny Beverage Corp. convertible debentures 6-1/4% of 1988, F & A 1, JLI had an inventory of $31,000 face amount of such convertible debentures

12. (a) With regard to convertible debentures of D.W.G. Corp., JLI engaged in the following transaction in its trading account, and no others, between April 2, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
4/2/74	Bought $20,000	$480.50

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 D.W.G. Corp. convertible debentures 5-1/2% of 1994, J & J 15, JLI had an inventory of $20,000 face amount of such convertible debentures.

13. (a) With regard to convertible debentures of Applied Data Research, JLI engaged in the following transactions in its trading account, and no others, between April 8, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
4/8/74	Bought $10,000	$520.00
5/ /74	Bought $10,000	$570.00

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 Applied Data Research convertible debentures 6% of 1983, M & N 15, JLI had an inventory of $20,000 face amount of such convertible debentures.

14. (a) With regard to convertible debentures of Arwood Corp., JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $20,000	$470.00

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 Arwood Corp. convertible debentures 4-5/8% of 1987, J & D 15, JLI had an inventory of $20,000 face amount of such convertible debentures.

15. (a) With regard to convertible debentures of Inflight Services, JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $20,000	$380.00

(b) Immediately preceding the settlement of the sale to plaintiff of $20,000 Inflight Services convertible debentures 6% of 1989, M & S 1, JLI had an inventory of $20,000 face amount of such convertible debentures.

16. (a) With regard to convertible debentures of Knight Industries, JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $5,000	$530.00

(b) Immediately preceding the settlement of the sale to plaintiff of $5,000 Knight Industries convertible debentures 7-3/8% of 1983, J & D 1, JLI had an inventory of $5,000 face amount of such convertible debentures.

17. (a) With regard to convertible debentures of Lincoln Mortgage Investors, JLI was long $2,500 face amount thereof on April 30, 1974.

(b) With regard to convertible debentures of Lincoln Mortgage Investors, JLI engaged in the following transaction in its trading account, and no others, from and after April 30, 1974 and prior to the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $19,000	$510.00

(c) Immediately preceding the settlement of the sale to plaintiff of $20,000 Lincoln Mortgage Investors convertible debentures 8% of 1990, M & S 15, JLI had an inventory of $21,500 face amount of such convertible debentures.

18. (a) With regard to convertible debentures of Nortek Inc., JLI engaged in the following transactions in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $20,000	$440.00
5/30/74	Sold $5,000	$420.00

(b) Immediately preceding the settlement of the sale to plaintiff of $15,000 Nortek Inc. convertible debentures 6% of 1988, J & D 15, JLI had an inventory of $15,000 face amount of such convertible debentures.

19. (a) With regard to the first acquisition by plaintiff of convertible debentures of Technical Operations, JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $15,000	$750.00

(b) Immediately preceding the settlement of the sale to plaintiff of $15,000 Technical Operations convertible debentures 8% of 1985, F & A 1, JLI had an inventory of $15,000 face amount of such convertible debentures.

(c) With regard to the second acquisition by plaintiff of convertible debentures of Technical Operations, JLI engaged in the following transaction in its trading account, and no others, from May 31, 1975 and the sale thereof to plaintiff on June 3, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
6/3/74	Bought $6,000	$700.00

(d) Immediately preceding the settlement of the sale to plaintiff on June 10, 1974 of $5,000 Technical Operations convertible debentures 8% of 1985, F & A 1, JLI had an inventory of $6,000 face amount of such convertible debentures.

20. (a) With regard to convertible debentures of Monroe Group, JLI engaged in the following transaction in its trading account, and no others, between May 29, 1974 and the sale thereof to plaintiff on May 31, 1974:

Settlement Date	Face amount of debentures traded	Price per debenture
5/29/74	Bought $5,000	$530.00

(b) Immediately preceding the settlement of the sale to plaintiff of $5,000 Monroe Group convertible debentures 7-7/8% of 1984, JLI had an inventory of $5,000 face amount of such convertible debentures.

21. (a) With regard to convertible debentures of Elco Corp., JLI engaged in the following transaction in its trading account, and no others, between June 6, 1974 and the sale thereof to plaintiff on July 17, 1974:

Settlement Date	Face Amount of Debentures Traded	Price Per Debenture
6/6/74	Bought $15,000	$420.00

(b) Immediately preceding the settlement of the sale to plaintiff of $10,000 convertible debentures 4-1/2% of 1987, F & A 15, JLI had in inventory of $15,000 face amount of such convertible debentures.

22. Defendant JLI was not a market maker with respect to the common stock of Seaboard Coast Lines, Inc.

23. The following computation of JLI's gross profits is mathematically correct:

	Security	JLI Profit
(i)	Allegheny	$2,400
(ii)	D.W.G.	1,190
(iii)	Applied Data	1,600
(iv)	Arwood	600
(v)	Inflight	600
(vi)	Knight	300
(vii)	Lincoln	1,000
(viii)	Nortek	1,350
(ix)	Technical Operations	1,050
(x)	Monroe	400
(xi)	Elco	400

24. On May 29, 1974, defendant Lamula accompanied plaintiff to an office of the Bank of New York, Albany. At that time, in defendant Lamula's presence, plaintiff executed a note and security agreement with Bank of New York, Albany, in the face amount of $100,000, the original of which is marked plaintiff's Exhibit 13 for identification.

25. Defendant Lamula accompanied plaintiff to an office of the Bank of New York, Albany on May 30, 1974. At that time, defendant Lamula received from plaintiff at the Bank of New York, Albany a certified check drawn by plaintiff on her account with said Bank and payable to the order of defendant JLI in the sum of $99,804.45.

26. Defendant Lamula delivered plaintiff's certified check in the sum of $99,804.45 to defendant JLI on May 30, 1974. Mini Vena, Secretary and Treasurer of defendant JLI, prepared a receipt for the said $99,804.45 check on May 30, 1974.

27. On June 3, 1974 as trade date, June 10, 1974 as settlement date, defendants sold to plaintiff $5,000 Technical Operations Convertible Debentures 8% of 1985, sending her a confirmation and invoice with respect thereto.

Plaintiff sent defendant JLI her check no. 251 dated June 7, 1974, payable to its order in the sum of $4,136.67, in payment of such invoice; and Vena issued a receipt therefor dated June 12, 1974.

28. Plaintiff and Emerson, together with a touring party, flew from John F. Kennedy International Airport to Rome of June 24, 1974, returning therefrom to the United States on July 2, 1974.

29. On trade date of July 10, 1974, settlement date of July 17, 1974, defendants sold to plaintiff $10,000 convertible debentures of Elco Corporation 4-1/2% of 1987, for an aggregate purchase price of $4,752.50. Defendants sent plaintiff and confirmation with respect thereto under date of July 16, 1974. Plaintiff sent to defendant JLI her personal check no. 269, payable to its order in the sum of $4,752.50, the said purchase price.

30. Defendant Lamula wrote a letter to plaintiff under date of July 10, 1974 with respect to purchase of debentures of Elco Corporation.

31. In or about the last week of July and the first week of August 1974, plaintiff came to New York City and

had several discussions with defendant Lamula respecting her investments. At one of those discussions, defendants presented plaintiff with a statement of her account, reflecting all transactions therein from the date of the account's opening through the purchase of Elco Corporation convertible debentures.

32. All of the debentures purchased by plaintiff through June 1974 from defendants, were delivered by mail to plaintiff in or about the last week of June 1974. The Elco debentures purchased by her during July 1974 were delivered to her by defendants during August 1974.

III (b) Plaintiff's contentions as to liability and damages are as follows:

LIABILITY

1. The course of dealings engaged in by defendants with plaintiff, and the practices which they employed with her in connection with their sales to her of convertible debentures in May, June and July of 1974, violated §17(a) of the Securities Act of 1933 ("Securities Act") and §§ 10(b) and 15(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Article

III, §§2, 15 and 18 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD"), in that, with intent to mislead and deceive plaintiff:

A. Defendants did not have reasonable grounds for believing that the investments which they recommended to plaintiff, and which they induced her to make, were suitable for her.

B. Defendants did not acquire adequate knowledge, or attempt to acquire adequate knowledge, or information respecting plaintiff's other securities holdings, her financial situation, and other data reasonably necessary to make sound investment recommendations.

C. Defendants recommended to plaintiff that she purchase speculative low-priced securities, without adequately apprising her of the very substantial degree of risk in such investment, and without advising her that the market therefor was so thin that sale thereof would probably produce capital loss, and on occasion through deliberate misstatement about risk factors involved.

D. Defendants failed or omitted to disclose to plaintiff, or concealed from plaintiff, the existence of alternative investments which would have provided plaintiff with significantly greater security for her investment through diversity, soundness of the security involved, and availability of a market for later disposition. In fact, defendant Lamula discouraged plaintiff from holding her funds in banks; and never mentioned to plaintiff the name or description of any other type of security or investment, other than the low-rated or non-rated convertible debentures for which defendant JLI was a market maker, and most of which defendants ultimately sold to plaintiff or her account.

E. Defendants concealed from plaintiff the fact that defendant JLI was at the time a market maker in each and every one of the convertible debentures recommended by defendants to plaintiff for her investment account, until after the transactions had been effected.

F. Defendants concealed from plaintiff the fact that defendant JLI intended to act as a dealer, and not as plaintiff's broker in connection with the proposed acquisition by plaintiff of the convertible debentures recommended by defendants to plaintiff, until after the transactions had been effected.

G. Defendants' written confirmations of all of the transactions effected by them for plaintiff's account contained no indication that defendant JLI was a market maker with respect to such transactions, nor any indication (other than a coded number on the face of the confirmation relating to a series of legends thereon) that defendant JLI was acting as a dealer in the transactions.

H. Defendant Lamula, by his having provided plaintiff with false and inaccurate information respecting her investment needs, and the deceptions practiced by him in making recommendations for her investment portfolio, acquired practical operating discretion over the selection, quantities, amounts, times of purchase and purchase prices with respect to securities for plaintiff's account.

I. Plaintiff bought from defendants the issues and amounts of convertible debentures which defendants selected for her account in the exercise of their discretion.

J. Subsequently, plaintiff discovered the true nature of the investments she had thus been sold. She asked defendants to return her money and take back the securities; and they refused. Thereupon, in August 1974, (as to all debentures except those of Elco Corporation) she caused them to be sold. Elco debentures were sold by her in October 1974, promptly after their receipt from defendants. All issues were sold at a loss.

2. Operating as market makers and dealers with respect to all purchases by plaintiff from defendants, defendants manipulated plaintiff's securities account, and engaged in deception and fraud, or employed a scheme, artifice or course of business which operated as a fraud upon plaintiff, all in violation of §17(a) of the Securities Act, §§ 10(b) and 15(c) of the Exchange Act, and Article III, §§4 and 18 of the Rules of Fair Practice of the NASD, in that, with intent to mislead and deceive plaintiff:

A. Defendants sold the convertible debentures (or some of them) to plaintiff at a markup or markups which were excessive.

B. Defendants sold the convertible debentures (or some of them) to plaintiff at a markup or markups which were based upon manufactured, artificial or false information purporting to indicate the current market price of the debentures in question.

C. Defendants sold the convertible debentures (or some of them) to plaintiff at a price deliberately pegged by them at a level substantially in excess of the price at which, as they well knew, such debentures were available to plaintiff elsewhere on the over-the-counter market.

3. Pursuant to §20(a) of the Exchange Act, defendants are jointly and severally liable for all damages because (a) defendant Lamula did not act in good faith, and directly induced the acts constituting the violations in question through defendant JLI; and (b) defendant JLI failed (or in bad faith declined) to supervise defendant Lamula.

4. Defendants were aware at all times that plaintiff was relying entirely upon defendants' business judgment, honesty and expertise in the security industry. Defendants knew at all times that plaintiff was utterly lacking sophistication as an investor, money manager, or with respect to securities of any kind (and in particular convertible debentures). Notwithstanding such knowledge, and in deliberate breach of the fiduciary duty placed upon them by such circumstances, defendants entered upon a course of dealings for the deliberate purpose and with the

obvious intent of misleading plaintiff as to the true nature of her investment needs, the true nature of the investments recommended by them to her, the availability of other more desirable investments, and the prices at which the securities which they sold her could be otherwise obtained.

DAMAGES

1. By reason of the liabilities described in paragraphs 1 and 3 of the "Liability" section of this part III b, defendants are jointly and severally liable to plaintiff for the loss suffered by her, as measured by the difference between the price paid by her to defendant JLI for the purchase of the convertible debentures in questions and the proceeds received by her upon the sale of such convertible debentures promptly after discovery by her of defendants' wrongdoing. Plaintiff computes such loss as follows:

	Security	Purchase Price	Sales Proceeds	Loss
(i)	Allegheny	$17,700	$ 9,750	$7,950
(ii)	D.W.G.	10,800	8,350	2,450
(iii)	Applied Data	13,000	10,900	2,100
(iv)	Arwood	10,000	8,900	1,100

(v)	Inflight	8,200	4,700	3,500
(vi)	Knight	2,950	2,375	575
(vii)	Lincoln	11,200	5,700	5,500
(viii)	Nortek	7,950	6,075	1,875
(ix)	Technical Operations	15,700	12,100	3,600
(x)	Monroe	3,050	1,900	1,150
(xi)	Elco	4,500	2,950	1,550

In addition thereto, plaintiff is entitled to recover the interest paid by her in borrowing the funds necessary for her investments, in the amount of 1,117.81

Total $32,467.81

2. By reason of the liabilities described in paragraphs 2 and 3 of the "Liabilities" section of this Part III b, plaintiff is entitled to recover of defendants, jointly and severally, a sum equal to the difference between the prices paid by her for the convertible debentures sold to her by defendants and the lowest price for which each of such convertible debentures could have been acquired for her account by defendants between April 15, 1974 and the actual date of acquisition. Plaintiff computes such damage at $14,575.

3. By reason of the liabilities described in paragraph 4 of the "Liabilities" section of this Part III b, plaintiff is entitled to recover of defendants, jointly and severally, the profit made by them, as measured by the difference between the prices which defendant JLI paid to acquire the convertible debentures, and the prices for which they were sold by defendants to plaintiff, as follows:

	Security	Cost to JLI	Sales Price to plaintiff	Profit
(i)	Allegheny	$15,300	$17,700	$2,400
(ii)	D.W.G.	9,610	10,800	1,190
(iii)	Applied Data	11,400	13,000	1,600
(iv)	Arwood	9,400	10,000	600
(v)	Inflight	7,600	8,200	600
(vi)	Knight	2,650	2,950	300
(vii)	Lincoln	10,200	11,200	1,000
(viii)	Nortek	6,600	7,950	1,350
(ix)	Technical Operations	14,750	15,800	1,050
(x)	Monroe	2,650	3,050	400
(xi)	Elco	4,200	4,600	400
	Total			$10,890

Damages pursuant to this paragraph 3 are cumulative and should be added to all other damage sums, since a faithless fiduciary must account to his cestui que trust for the former's wrongful profit.

4. By reason of the risk of injury to the public through improper, fraudulent and deceitful practices as engaged in by defendants through their manipulative pricing of the convertible debentures and their excessive markup thereof, defendants should pay punitive damages in the amount of $150,000.

III (c) The contentions of both defendants as to liability and damages are as follows:

LIABILITY

1. The defendants at all times acted correctly in their dealing with plaintiff and in accordance with the various statutes, rules and regulations governing their business.

2. Upon information and belief, plaintiff purposefully and willfully sold the securities in question at the lowest possible price for the sole purpose of having grounds to commence this action.

DAMAGES

1. Plaintiff knew at the time she purchased the securities that the purchase price thereof fluctuated and therefore had knowledge that she might sustain a loss upon selling at any given time.

2. Plaintiff did not use prudence in disposing of her securities and therefore any loss was of her own making.

IV (a) The exhibits which plaintiff now expects to offer in evidence at the trial are those listed below:

Number for identification	Description
1	Account card
2	Confirmation on the letterhead of John Lamula Investors, Inc., with trade date of 5-22-74 and settlement date of 5-30-74 in the net amount of $18,325 with regard to Allegheny Beverage Corp.
3	Confirmation from John Lamula Investors, Inc. with respect to D.W.G. Corp.
4	Confirmation from John Lamula Investors, Inc. with regard to Applied Data Research
5	Confirmation from John Lamula Investors, Inc., with regard to Arwood Corporation
6	Confirmation from John Lamula Investors, Inc., with regard to Inflight Services
7	Confirmation from John Lamula Investors, Inc., with respect to Knight Industries

Number for Identification	Description
8	Confirmation from John Lamula Investors, Inc., with regard to Lincoln Mortgage Investors
9	Confirmation from John Lamula Investors, Inc. with respect to Nortek Incorporated
10	Confirmation from John Lamula Investors, Inc., with regard to Techinical Operations
11	Confirmation from John Lamula Investors, Inc., with respect to the Monroe Group
12	Document labeled Statement, John Lamula Investors, Inc., addressed to Mrs. Grupe
13	The note and security agreement dated 5-29-74
14	A certified check memo debit entry of the Bank of New York, Albany, dated 5-30-74
15	Slip of paper on the stationery of John Lamula Investors, Inc., dated 5-30-74
16	Letter dated May 22, 1974, on the letterhead of John Lamula Investors, Inc., addressed to Mrs. Grupe
17	A one-page document on the letterhead of John Lamula Investors, Inc., dated 5-24-74
18	Document on the letterhead of John Lamula Investors, Inc., addressed to Mrs. Grupe
18-A	Original of Plaintiff's Exhibit 18
19	Envelope containing reports

Number for Identification	Description
20	Sheet of paper with an attachment of a sticker saying John Lamula Investors, Inc. on it, and various other attachments
21	Confirmation on the letterhead of John Lamula Investors, Inc. which refers to Technical Operations
22	Three pieces of paper stapled together, the top sheet is headed Statement, John Lamula Investors, Inc.
23	Copy of letter on the letterhead of John Lamula Investors, Inc., dated 6-3-74
24	Check number 251, dated 6-7-74, on Mrs. Grupe's account with Bank of New York, Albany
25	Receipt for check of $4,136.67, dated 6-12-74, on the stationery of John Lamula Investors, Inc.
26	Slips of paper with John Lamula Investors, Inc., dated 6-17-74
27	A note on the stationery of John Lamula Investors, Inc., 6-17-74
28	Piece of paper on stationery of John Lamula Investors, Inc., addressed to the witness, signed by Mini Vena
29	Copy of a letter headed "Dear John" and signed by "Bea"
30	Two-page writing, on stationery marked Memo from Office of Senate President pro tem

Number for identification	Description
31	Letter dated July 8, 1974, on the letterhead of John Lamula Investors, Inc., addressed to plaintiff
32	Letter with the letterhead of John Lamula dated 7-10-74, addressed to plaintiff
33	Confirmation on stationery of John Lamula Investors, Inc., with regard to Elco Corp.
34	Copy of a four-page letter and a copy of an envelope attached to it, sent by plaintiff to John Lamula
35	Check number 269 on bank account of witness
36	Slip on the letterhead of the Bank of New York, Albany, dated 7-22-74.
37	Letter dated 7-17-74, on the letterhead of the Bank of New York, Albany, signed Paul J. Leyden, addressed to the witness
38	Slip headed on the Bank of New York, Albany, with plaintiff's name on it
39	Annual report 1973 for Elco Corp. with a stamp on the face saying John Lamula Investors, Inc.
40	Bills and receipt of plaintiff's stay at Westbury Hotel, receipt of Bank Americard credit card
41	Document of two sheet labeled "Statement, John Lamula Investors, Incorporated"
42	Copy of a letter on the letterhead of John Lamula, Inc., dated 6-21-74

Number for identification	Description
43	Copy of a confirmation from John Lamula Investors, Inc., with respect to Seaboard Coast Line
44	Confirmation with a settlement date of 7-2-74 on the letterhead of John Lamula Investors, Inc., with respect to Seaboard Coast Lines, with the words "Cancelled as of 7-2-74"
45	19 confirmation, of which 16 are yellow marked duplicate and indicate sales, and 2 are green and are marked cancellations
46	Letter dated 8-26-74, on the letterhead of John Lamula Investors, Inc.
47	Copy of a letter on the stationery of John Lamula Investors, Inc., addressed to plaintiff, dated7-19-74
48	Copy of a letter dated 7-22-74, on the stationery of John Lamula Investors, addressed to plaintiff
49	Copy of a letter dated 7-29-74, addressed to the plaintiff, bearing typed signature John, attached to which is a quotation from a ticker tape
50	Memorandum dated 7-29-74, from John Lamula to Mrs. Grupe
29-A	Document previously marked Plaintiff's Exhibit 29, an original document
51	Annual Report of Inflight Services, Inc. for 1973
55	Calendar entry dated Thursday, 3-21-74

Number for Identification	Description
56	Slip of paper from diary, dated Tuesday, 3-26
57	Slip of paper from diary, dated Tuesday, 4-2
58	Slip of paper with heading "April 15th"
59	Entry dated 5-14
60	Slip of paper dated Tuesday, 5-21
61	Slip dated Friday, 5-24
62	Slip of paper dated 5-28-74
63	Statement on yellow sheet
30A	Two-page letter and attachments
64	Piece of paper dated Monday, 7-1
65	Ticket for sale of stock, dated 6-21
66	Cancellation ticket dated 7-2
67	Form X-17A-5
68	Form X-17A-5 dated 12-21-74
69	Statement of John Lamula Investors for Seaboard Coast Lines
70	Office ticket and bill consisting of two pages
71	Slip of diary dated 7-11
72	Slip of diary dated 7-14 and 7-15
73	Slip of diary dated 7-22

Number for Identification	Description
74	Slip of diary dated 7-31
75	Slip of diary dated August 1 and 2
76	Diary sheet dated 8-5
77	Confirmation of slip of Allegheny Beverage
78	Confirmation of D.W.G. Corp.
79	Applied Data Research confirmati[illegible] order ticket
80	Confirmation and order ticket Arwood Corporation
81	Inflight Motion Pictures order ticket and confirmation
82	Knight Industries order ticket and confirmation
83	Order ticket and confirmation sheet Lincoln Mortgage Investors
84	Nortek order sheet and confirmation
85	Order sheet and confirmation for Technical Operations
86	Confirmation and order sheet for Monroe Group
87	Allegheny Beverage trading sheet
88	D.W.G. Corp. sheet
89	Sheet of Applied Data
90	Arwood Corporation sheet

Number for identification	Description
91	Inflight Motion Pictures sheet
92	Trading sheet for Knight Industries
93	Sheet of Lincoln Mortgage
94	Sheet of Nortek
95	Trading sheet of Technical Operations
96	Trading sheet of Monroe Group
97	Trading sheet of Elco
98	Technical Operations confirmation and order sheet
99	National Daily Quotation Service ("Yellow Sheet"), 6-5-74, p. 49
100	Yellow Sheet, 6-4-74, p. 49
101	Yellow Sheet, 6-3-74, p. 49
102	Yellow Sheet, 7-16-74, p. 16
103	Yellow Sheet, 7-15-74, p. 16
104	Yellow Sheet, 7-12-74, p. 16
105	Yellow Sheet, 7-11-74, p. 16
106	Yellow Sheet, 7-10-74, p. 16
107	Yellow Sheet, 7-9-74, p. 16
108	Yellow Sheet, 7-1-74, p. 16
109	Yellow Sheet, 5-21-74, p. 2

Number for identification	Description
110	Yellow Sheet, 5-21-74, p. 5
111	Yellow Sheet, 5-21-74, p. 14
112	Yellow Sheet, 5-21-74, p. 25
113	Yellow Sheet, 5-21-74, p. 28
114	Yellow Sheet, 5-21-74, p. 29
115	Yellow Sheet, 5-21-74, p. 32
116	Yellow Sheet, 5-21-74, p. 36
117	Yellow Sheet, 5-21-74, p. 49
118	Yellow Sheet, 5-22-74, p. 2
119	Yellow Sheet, 5-22-74, p. 5
120	Yellow Sheet, 5-22-74, p. 14
121	Yellow Sheet, 5-22-74, p. 26
122	Yellow Sheet, 5-22-74, p. 28
123	Yellow Sheet, 5-22-74, p. 29
124	Yellow Sheet, 5-22-74, p. 33
125	Yellow Sheet, 5-22-74, p. 36
126	Yellow Sheet, 5-22-74, p. 50
127	Yellow Sheet, 5-23-74, pp. 1 and 2
128	Yellow Sheet, 5-23-74, p. 5
129	Yellow Sheet, 5-23-74, p. 14

Number for identification	Description
130	Yellow Sheet, 5-23-74, p. 26
131	Yellow Sheet, 5-23-74, p. 28
132	Yellow Sheet, 5-23-74, p. 29
133	Yellow Sheet, 5-23-74, p. 33
134	Yellow Sheet, 5-23-74, p. 36
135	Yellow Sheet, 5-23-74, p. 49
136	Yellow Sheet, 5-24-74, p. 1
137	Yellow Sheet, 5-24-74, pp. 5 and 6
138	Yellow Sheet, 5-24-74, p. 14
139	Yellow Sheet, 5-24-74, p. 25
140	Yellow Sheet, 5-24-74, p. 28
141	Yellow Sheet, 5-24-74, p. 32
142	Yellow Sheet, 5-24-74, p. 36
143	Yellow Sheet, 5-24-74, p. 49
144 (collective)	Yellow Sheets, 8-6-74
145 (collective)	Yellow Sheets, 8-7-74
146 (collective)	Yellow Sheets, 10-9-74
147 (collective)	Yellow Sheets, 4-15-74 - 5-22-74, one for each of the ten convertible debenture issues purchased on 5-23-74

Number for identification	Description
148	Letter to plaintiff from the Bank of New York, Albany dated 6-13-74

IV (b) The exhibits which defendants now expect to offer in evidence at the trial are those listed below:

Defendants reserve the right to introduce into evidence any and all exhibits identified at any of the examinations before trial or as part of any production of documents pursuant to notice. In addition, upon first giving notice to plaintiff, defendants reserve the right to introduce such other exhibits as may be relevant following the presentation of plaintiff's case.

IV (c) If any party hereto shall hereafter decide to offer additional exhibits, prompt notice thereof shall be

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*At the time of preparation of this Exhibit, delivery of certain documents pursuant to plaintiff's Second Document Request is forthcoming. Pursuant thereto, plaintiff expects to receive, and may wish to introduce into evidence at the trial, bank records (including checkbooks, deposit records, and the like) for the months of May 1974 to August 1974 reflecting the purchase by defendant JLI of the convertible debentures sold by it to plaintiff and 1974 financial statements of defendant. Also expected to be delivered are copies of certain ledger pages from defendant JLI's trading account records, which plaintiff may wish to introduce.

given to each other party hereto in writing, setting forth the reason why such exhibit was not heretofore identified. No exhibit may be offered at trial unless identified as set forth in the preceding sentence.

IV (d) Of the documents listed in either subparagraph a or subparagraph b of this paragraph IV, those marked with an asterisk are conceded to be genuine; but such concession shall not be deemed a concession of admissibility thereof.

V (a) The witnesses whom plaintiff now intends to call at the trial (and the specialty of any expert intended to be called) are:

✓ 1. Bernice C. Grupe

2. John Lamula*

3. Mini Vena*

Def 4. Dorothy Emerson*

✓ 5. Harry C. Rowney;
an expert in investment counseling.

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* To be examined as a hostile witness, adverse party or witness identified with an adverse party, pursuant to Rule 611(c), Federal Rules of Evidence.

6. an expert in bond and debenture transactions in the securities industry.

NOTE: Plaintiff has not yet selected an expert with regard to bond and debenture market matters; and will notify defendants when and if such selection is made.

V (b) The witnesses whom defendants now intend to call at the trial, along with the specialty of experts intended to be called by them, are:

1. Bernice C. Grupe*
2. John Lamula
3. Mini Vena
4. Dorothy Emerson
5. Robert Loeb, a member of the firm of L. F. Rothschild
6. A member of the firm of Standard & Poor's who shall be chosen by that Company to appear on their behalf
7. A member of the firm of Moody's who shall be chosen by that Company to appear on their behalf.

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* This party is to be examined as a hostile witness since she is an adverse party, pursuant to Rule 611(c), Federal Rules of Evidence.

8. One or more persons who accompanied plaintiff on the European trip in July**

9. An expert in bonds and debenture transactions in the securities industry**

V (c) If any party hereto shall hereafter decide to call any additional witnesses, prompt notice of their identity shall be given to each party hereto in writing, setting forth the reason why such witness was not theretofore identified. No witness may be called at the trial unless identified in the manner described in the preceding sentence.

VI There is no stipulation relating to the number of expert witnesses.

VII All of the claims for damages or for other relief asserted by plaintiff in this action, as of this date, are as follows:

Plaintiff's claim for damages are set forth in the "damages" part of paragraph IIIb of this order. In addition, plaintiff is entitled to an accounting from defendants, and each of them, as to any and all profit realized with respect to the sales of convertible debentures by them to plaintiff.

** The defendants have not yet decided on the exact witnesses and/or expert to appear and will notify plaintiff when and if such selections are made.

VIII Plaintiff at this time expects to require four trial days to present her case; defendants at this time expect to require four days to present their defense.

IX (a) The issues in controversy raised by the prior proceedings herein, stated as facts which plaintiff now proposes to prove, are as follows:

Raised by the Complaint

ALL THE CONTENTIONS SET FORTH
IN PART IIIb OF THIS ORDER
SHALL BE DEEMED REPEATED AND
REALLEGED IN THIS PART IXa

1. Under her separation agreement with her second husband, plaintiff received a lump-sum settlement of $150,000, payable as follows: $20,000 on the signing of the agreement, and $130,000 within ninety days thereafter. The separation agreement contained no provision for alimony, and plaintiff has received no alimony or other payments from Mr. Grupe, except the $150,000 referred to in this paragraph. The lump-sum payments so received constituted virtually all of plaintiff's assets.

2. Shortly after defendant Lamula first met plaintiff during March, 1974, he learned that plaintiff was completely unsophisticated with respect to investments, the securities

markets, the development of an investment program, and practicalities involved in selecting and maintaining an investment portfolio. Such knowledge was acquired by Lamula several weeks before the first sale of convertible debentures by defendants to plaintiff late in May, 1974.

3. By early April, 1974, Lamula knew that plaintiff was completely dependent upon him for business guidance and that she was relying upon his investment judgment in the selection of securities or other investments, the proportions thereof for her portfolio, the timing of their purchase, the quantities to be bought and the prices to be paid. He disregarded the trust responsibilities thereby imposed upon him, and set upon a scheme calculated by him to produce a large profit for defendants without concern for plaintiff's apparent investment needs and best interests.

4. During the discussions in March, April and May in 1974 which preceded plaintiff's first purchases of securities from defendants, Lamula endeavored to obtain practical control, and in fact did obtain and enjoy practical control, over the investment program which plaintiff was considering.

5. Despite plaintiff's expressed interest in acquiring safe investments with assured income, Lamula recommended

to plaintiff the purchase of certain convertible debentures traded over-the-counter, none of which was rated higher than B, and most of which bore "no rating", from Moody's and Standard and Poor's rating services. Lamula recommended no other investments or investment alternatives to plaintiff. He deliberately concealed from plaintiff the fact that JLI was a market maker with respect to each of the convertible debenture issues in question; and that JLI would be acting as a dealer in the contemplated transaction for plaintiff's account, and not as her broker.

6. The purchases made by plaintiff of additional convertible debentures from defendant in June and July, 1974 were in fact effected for plaintiff's account by defendants without her prior knowledge or consent; or, at the very least, were induced by Lamula through the same deliberate concealments, failure to consider suitability of investments, actual misrepresentations as to risk factors, and self-interested objectives as induced plaintiff's earlier purchases from defendants.

7. In order to make available funds for the sale by defendants to plaintiff of the convertible debentures purchased by her in May, 1974, Lamula recommended to plaintiff

that she borrow $100,000 from the Bank of New York, Albany; which, in the company of Lamula, plaintiff thereupon proceeded to do, thereby incurring substantial interest expense. Further, the subsequent purchases in June and July, 1974 necessitated an invasion by plaintiff of her limited savings reserve.

8. In determining the prices at which they sold the convertible debentures to plaintiff, defendants took an excessive markup on all of the convertible debentures, over and above the apparent prevailing market price therefor in the regular or dealers' market on the purchase dates involved. They assembled the "package" of convertible debentures for sale to plaintiff, after knowledge that they had discretion with respect to the selection, time of purchase and purchase prices, making the purchases thereof for their own inventory at such times and prices as offered defendants the best prospect for personal profit, without regard to their duty to plaintiff. They fraudulently concealed from plaintiff the prices at which the convertible debentures were available in the regular over-the-counter market on the purchase dates involved.

9. At no time prior to the discovery by plaintiff of the deceptions practiced upon her by defendants in the pricing of the securities sold by them to her, did defendants disclose to plaintiff the improper, fraudulent and deceitful market practices followed by them in pricing the securities.

10. The conduct of defendants above described was unlawful under §17(a) of the Securities Act and §§10(b) and 15(c) of the Exchange Act, and the regulations promulgated thereunder by the Securities and Exchange Commission, particularly Regulation 10b-5. It also violated the duties owed by defendants to plaintiff under Article III, §§2, 4, 5 and 18 of the NASD, which have the standing of violations of the Exchange Act under §15A thereof.

11. As founder, president, director and majority stockholder of defendant JLI, defendant Lamula controlled JLI and is jointly and severally liable for misconduct by defendant JLI. By the same token, defendant JLI is jointly and severally liable with defendant Lamula, since it failed to exercise suitable supervision of and control over his conduct as its president and principal employee.

12. The conduct of defendants in procuring the purchases made by plaintiff from them, their disregard of considerations of suitability, and the concealment of their role as principals, also constituted a breach or multiple breaches of the common law fiduciary duty owing by defendants to plaintiff. Also, the pricing practices engaged in by defendants constituted a further breach or breaches of their fiduciary duty to plaintiff.

13. The pricing practices engaged in by defendants are so reprehensible in their nature, and so offensive to good order of, and continuance of public confidence in, the reliability of the over-the-counter securities market as to constitute a course of fraudulent dealings perpetrated not only upon plaintiff but also upon the public at large; and entitling plaintiff to the recovery of punitive damages.

Raised by the Affirmative Defenses

14. Promptly upon the discovery by plaintiff that the securities sold to her were not as represented to her, but were, in fact, speculative, with poor prospects for the continuation of interest, and with a thin market for their disposal,

she asked defendants at once to dispose of them and make restitution to her of the money spent by her to acquire them. When defendants refused to do so, plaintiff promptly delivered such securities to L. F. Rothschild & Co., a reputable member firm of the New York Stock Exchange, which thereupon duly and properly disposed of the convertible debentures in the over-the-counter market as broker for plaintiff at the market prices then available therefor. She received therefor net proceeds of $73,700.

15. During the discussions had between plaintiff and Lamula in March, April and May, 1974, preceding the first purchase by plaintiff of securities from defendant, defendant never advised plaintiff, and plaintiff had no independent knowledge, respecting the marketability (or lack of marketability) of convertible debentures of the type recommended to her by Lamula for her portfolio; and, consequently, she was unaware that the risk of loss from the sale of any one or more of such convertible debentures was significantly greater than that which was entailed in acquiring securities with a better rating, more market makers, and broader distribution of ownership.

IX (b) The issues in controversy raised by the prior proceedings herein, stated as facts which defendants now propose to prove, are as follows:

Defendants do not have the burden of proof of any issue and therefore do not propose proving anything.

X Each party shall have a continuing obligation to supplement its prior responses to any requests for discovery including but not limited to demands for production of documents and answers to written interrogatories promptly after such party discovers that he, she or it has in his, her or its possession information or documents not supplied in his, her or its original responses to such requests for discovery.

XI This pre-trial order may be modified upon trial, or prior thereto, as the court may deem just and proper. Such modification may be made either upon application of counsel or as the court, sua sponte, may determine.

Dated: New York, New York
May 6 , 1976

CONSENTED TO:
SILBERFELD, DANZIGER
& BANGSER, Attorneys for
Plaintiff:

By: ____________________

BARATTA & GOLDSTEIN,
Attorneys for Defdts.

By ____________________

SO ORDERED:

____
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------------x

BERNICE C. GRUPE,

Plaintiff

vs.

JOHN LAMULA INVESTORS, INC.,
& JOHN J. LAMULA,

Defendants.

-------------------------------x

:Before:
:HON. GERARD L. GOETTEL, D.J.,
and a Jury

75 CIVIL 2083

New York, October 27,28,29, 1976
November 1, 1976

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

BERNICE C. GRUPE, :

Plaintiff, :

v. : 75 Civ. 2083

JOHN LAMULA INVESTORS, INC. and
JOHN J. LAMULA, :

Defendants. :

---x

BEFORE:

HON. GERARD L. GOETTEL,

District Judge
And a Jury.

New York, N.Y.
October 27, 1976 - 10:15 A.M.

APPEARANCES:

SILBERFELD, DANZIGER & BANGSER, ESQS.,
Attorneys for Plaintiff
BY: ROBERT M. BLUM, ESQ.,
of Counsel

BARATTA & GOLDSTEIN, ESQS.,
Attorneys for Defendants.
BY: HOWARD J. GOLDSTEIN, ESQ.
-and-
LINDA BODNER, ESQ.,
of Counsel

(A jury was duly impaneled and sworn.)

(Two alternate jurors were sworn.)

(In open court - jury present.)

THE COURT: This case will proceed in the following order.

The plaintiff may make an opening statement outlining her case. Then the defendant may also make an opening statement outlining his case, although neither party is required to make an opening statement.

The opening statements are not evidence but are merely to aid you in understanding the significance of the evidence when it is introduced.

After the opening statements, if any are made, the plaintiff will introduce evidence. Rebuttal evidence may be -- excuse me. At the conclusion of the plaintiff's evidence, the defendant may introduce evidence, and then rebuttal evidence may be introduced.

At the conclusion of all the evidence, the attorneys may make closing arguments. After the closing arguments, you will be given further instructions and you will deliberate and arrive at your verdict.

Faithful performance by you of your duties is vital to the administration of justice. The law applicable to this case will be contained in the instructions I give you during the course of the trial and it is your duty to follow all such instructions. It is your duty to determine the facts and to determine from them the evidence and the reasonable inferences arising from such evidence and in so doing, you must not indulge in guesswork or speculation.

The evidence which you are to consider consists of the testimony of witnesses and the exhibits admitted in evidence. The term "witness" means anyone who testified in person or by deposition. The admission of evidence in court is governed by rules of law. From time to time it may be the duty of the attorneys to make objections and my duty as judge to rule on those objections and, thus, whether you can consider certain evidence. You must not concern yourselves with the objections or the Court's reasons for these rulings. You must not consider testimony or exhibits to which an objection was sustained or which has been ordered stricken.

Opening statements and closing arguments of the attorneys are intended to help you in understanding the evidence in applying the law, but they are not evidence. You must not be influenced in any degree by any personal feeling of sympathy for or prejudice against the parties or their counsel.

No statement or ruling or remark which I may make during the presentation of testimony is intended to indicate my opinion as to what the facts are. You are to determine the facts. In this determination, you alone must decide upon the believability of the evidence and its weight and value.

In considering the weight and value of the testimony of any of the witnesses, you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the suit, the relation of the witness to the parties, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness' statements, and all the other facts and circumstances in evidence.

Thus, you may give the testimony of any witness just such weight and value as you may believe the testimony of such witness is entitled to receive.

Until this case is submitted to you for your deliberation, you must not discuss this case with anyone or remain within hearing of anyone discussing it; nor read any newspaper article, listen to any radio broadcast, nor view any television program which discusses the case.

After this case has been submitted to you, you must discuss this case only in the jury room when all members of the jury are present. You are to keep an open mind, and you must not decide any issue in this case until the case is submitted to you for your deliberation under the instructions of the Court.

Does the plaintiff wish to make an opening statement?

MR. BLUM: Yes, your Honor.

THE COURT: You may proceed.

MR. BLUM: Ladies and gentlemen, if at any point any of you cannot hear me, please advise me and I will raise my voice for that purpose.

The plaintiff is the lady sitting at the counsel table here, Bernice Grupe.

She is a resident of a suburb of Buffalo. This action which is a simple action in its essentials is an unusual case because of the complexities of the business transactions which were involved and the judgments which it requires you to make in understanding the issues which are being submitted to you to decide.

I will state in brief the story which gives rise to this action and then I will come back and emphasize certain particular aspects of it.

Mrs. Grupe, a woman in her late fifties, having been divorced received a lump-sum settlement upon her divorce, without alimony. She was a retired school teacher. She had received a small pension. She went to Albany, New York, not knowing what to do with this lump-sum settlement which she had received which was a large amount, a larger amount than she had ever had to decide what to do with before.

Her children were grown up, independent. she had no dependents, so she put the money that she had into a bank, $100,000 of it. She bought a certificate of deposit, which is a time deposit with a bank that carries interest. She spent some money furnishing an apartment, she bought herself a second-hand car because you need that in Albany, she bought herself a coat, and she went to find a job.

She found a job as an employee, an educational consultant, because that was her background and experience, with the State Legislature, the State Senate. There she was employed in a temporary job, what's known as a session job, lasting for the legislative session.

All this occurred in 1974, at the outset of 1974. This session job as educational consultant provided her with a salary of $150 a week as long as the legislative session lasted.

While she had an apartment at her home which was outside Buffalo, she took a room at the DeWitt Clinton Hotel in Albany and there she met a lady who worked with her in the Senate, an elderly woman who has since retired and lives in upstate New York, Dorothy Emerson.

She and Dorothy Emerson became good friends and I believe they are to this day. To Dorothy Emerson she confided this problem she had of the need to find some way of investing this money because she was quite insecure, she had this pension which provided her $2,000 a year, and she had a temporary job at $150 a week that was due to close down whenever the State Legislature stopped sitting whenever it may be, May or June. So while she had money, she had to find some way to develop security from that money for herself.

She became friendly with Dorothy Emerson and asked Dorothy Emerson if she knew anybody who might be able to advise her as to what was appropriate to do because she had no experience in investments, her second husband from whom she was divorced after some six or seven years of marriage had some investment experience but she wasn't a part of that and she had no investments except one stock that he had bought for her when she took out her cash payment on teacher's retirement. So no market experience, no investment experience, and she asked her friend Dorothy Emerson, "Do you know anybody," and she did. She recommended her to the defendant John Lamula, who was the president and chairman of the board and the principal stockholder in a company which bears his name, John Lamula Investors.

She recommended John Lamula very highly because she had known him from political affairs, he had been in the State Legislature briefly and she knew him from that. He was a consultant to various State Senate committees and she had invested some money through him and she thought John Lamula was a fine and honorable man and so she told Mrs. Grupe.

Mrs. Grupe said she would be interested in meeting with him and discussing what to do with her money. So then in the spring of 1974 Dorothy Emerson arranged some meetings, and a series of meetings took place at the end of which Mr. Lamula, having recommended that she buy certain securities for her, she authorized, she said, all right I think, John, I don't understand what you are telling me about securities, it's not my thing, I am an educational specialist and I am an economist, but Dorothy recommends you highly and you say these are safe investments and I trust you, go ahead and buy them for me.

So he did. He bought her -- he used up this entire sum of money and indeed he went back to the market twice more, each without telling her in advance, twice more he went back and bought small additions. So that she had invested altogether something like 105 or $106,000.

What did he buy for her? He didn't buy for her the securities that those of you who may have some market familiarity might know of. He didn't recommend to her in the spring of 1974 that she might consider United States Treasury bonds because you all recall --

MR. GOLDSTEIN: I think Mr. Blum is summing up.

THE COURT: You are arguing. Get to what you are going to prove. Not what might have occurred.

MR. BLUM: We will show that he made to her no recommendations of other securities, that he recommended to her nothing but securities for which he himself was a dealer. There is a difference between a broker and a dealer, and expert testimony will elaborate this difference to you. In sum, it's the difference between somebody who is in business for himself and somebody who is acting as your agent. Although Mr. Lamula didn't tell it to her, what he was recommending to her were only securities which he himself dealt in. He was a market-maker for those securities.

What were the securities that he recommended to her? You will see their names on one of these placards. There were eleven of them altogether. Not one of them was a New York Stock Exchange corporation, not one of them was a security of an American Stock Exchange corporation. Every one of these, it will be shown, was a subordinated convertible debenture. That's a long term that describes a particular kind of issue of debt of a corporation. Every one of these were a debenture, a debt, of companies with which Mr. Lamula was familiar because he had a special franchise to be a market-maker in those securities. That is, to stabilize the market by fairly buying and selling for his own account. None of this did he tell to Mrs. Grupe.

I will come back to describe certain other things which we will show that were omitted to be told her, and certain things which were told her which were untrue.

But let me go on. This portfolio, as it was called, this group of securities was bought for her by Mr. Lamula not acting as her agent, though she thought he was, but --

MR. GOLDSTEIN: Again I must object.

THE COURT: I will allow that. I think it is admissible.

MR. BLUM: (Continuing) -- but acting on his own behalf in selling them to her, and she was pleased because she had told him she wanted safe investments and he said these were, and she wanted safe investments which would give her enough money to live on, and she said she didn't have expensive tastes, she said she wanted to be able to have $12,000 a year to live on, which she thought it would take her to live comfortably and Mr. Lamula told her the income from these convertible debentures would give her enough to be able to do that.

She had these bonds he bought for her and she was pleased with them. Now it's the end of May of 1974 and two or three months passed. What happened then? Mrs. Grupe mentioned to her nephew, whom she saw while departing to Europe, she bought these securities through Mr. Lamula and he was a fine investor and these were wonderful securities and she was very pleased with it. This was late in June.

Her nephew, unknown to her, had been in the investment business himself, a youngster, was new in the business, and he checked on these securities. A few days after she returned from this tour to Europe, which she had taken with her friend Dorothy Emerson and some others, her brother-in-law and her sister said to her, "You know --"

MR. GOLDSTEIN: I must object and I would request a conference at the bench.

THE COURT: All right.

(At the bench.)

MR. GOLDSTEIN: Your Honor, neither the brother-in-law or the sister is listed as witnesses. Therefore, they will not testify. Therefore, she cannot testify as to what they said to her. It's all hearsay. If Mr. Blum would bring that out now, what she said, he is in effect getting this into the record when it can't get in the record any other way.

THE COURT: I understand the objection.

MR. BLUM: I make this comment. I am not offering it for the truth of what they said. I am offering it for state of mind. You brought in issue, you opened the door on this, Howard, by saying that this lady's motive in selling these securities was to get John Lamula, and I think by doing that I am not offering this as hearsay, I am offering this under 801-C and I am offering it under 801-B. There is a direct charge her motive was such.

Further, on the hearsay exceptions it would pass as an exception on the state of her mind which you have brought squarely into issue by saying the reason she did this, the reason she sold these, was she wanted to get

John Lamula.

MR. GOLDSTEIN: The only thing that can be brought in is if she testified I met with my brother-in-law and after that, what did you do. She can't say what the brother-in-law said to her.

THE COURT: He is not going to attempt to prove what he said to her, but what she said to her brother-in-law by proving her then state of mind. I can't rule on the evidentiary problem in a vacuum. I will have to see how it develops.

MR. GOLDSTEIN: Mr. Blum was getting to the point what her brother-in-law said to her and that's when I objected.

THE COURT: I don't think you should tell us what the brother-in-law said to her because you are not attempting to prove it.

MR. BLUM: I am entitled to prove it under the state of mind. I am not offering it for the truth of what he said to her. I am trying to show why she sold these, because various people told her things. I am not offering it for what was said was true or not. It's a state of mind question.

THE COURT: I am not going to attempt to evaluate the evidentiary issue on an opening argument and without having any authorities presented to me. Let me suggest that it's not so critical to your opening statement that you need make any detailed statement as to what she may testify in that regard. If you omit it now, you avoid any problems of me having to direct the jury to ignore the remarks later on, and if it turns out that it's not admissible.

MR. BLUM: I am reserving my right. I think I am dead right on that, that those issues were brought in issue by the defense.

THE COURT: Give me a memorandum of law. The new rules contain some exceptions to the hearsay rule it's difficult to keep up with them. I want to know how you think they are applicable from here.

Let's move on now.

(In open court.)

MR. BLUM: So she discussed these securities with her brother-in-law and her sister, and then she and her sister went down to the Buffalo Public Library, and she looked up in the guides that you will hear from expert testimony are the standard guides consulted by people who find out whether bonds or stocks are considered of investment quality.

She looked in there and she found that every single one of these convertible debentures was either not listed because as the instructions of the companies, the rating companies, Moody's and Standard & Poor's said, not listed because there wasn't sufficient information to form an investment opinion on them, or not listed -- or else rated at well below investment quality. Some of them were indeed rated in the words of Standard & Poor's listings as outright speculation. All of them which had ratings attached to them, it will be shown, were rated at levels which indicated that the maintenance of income was open to question.

This was not what she thought she bought, so she came to New York, she discussed the problem once again with her nephew Will Morris she now knew was in this business and following that she called John Lamula and sat down with him and asked him what's the story on these things you sold to me and John Lamula told her they are all wonderful, they are going to be very good, I am assuring you they are fine securities, quite suitable for you, fine securities, nothing to worry about. Didn't you read the annual reports of the companies I gave to you. Of course she had not read the annual reports because if any of you has seen the annual report of a company and if any of you has not had experience in Wall Street, you don't know what even to look for in an annual report.

And so she said what's the value of them and he told her one thing, and then she went back to her nephew and said what's the value of them and she learned another. Then she went to another broker and said -- she went back to Mr. Lamula and said sell them for me, and he said I won't. So she turned to another broker now in a thorough panic because of what had happened, she now knew what had been sold her was worth, as she had been told, some 30 or $40,000 less than she had paid for them only three months before.

She sold them. It's to recover the damage she suffered by reason of that loss she has brought this action. There are other damages involved, too.

This takes me back to the discussion had by Mrs. Grupe and Mr. Lamula in the spring of 1974, three months earlier.

You will hear conflicting testimony as to the number of meetings that there were. Mrs. Grupe says there were three or four, Mr. Lamula I think you will hear from his depositions will say there were five or maybe six and Dorothy Emerson's testimony will be available to you says there were as many as ten. It isn't important whether there were four, five, six, seven or eight meetings. The important thing was that during all of these meetings a great many essential pieces of information were not given to Mrs. Grupe on the basis of which she could have learned what it was that she ought to do.

All of you know, I am sure, or believe as I do, that when a person invests he takes a risk. But the question is, and the law as it will be told to you will indicate, that in determining whether to take that risk the investment adviser is obliged to fairly tell you the relevant information and to not hold back anything that might reasonably affect your investment decision.

That's why this action is brought, because so many things that should have been told to her were not told to her.

For example, at no time in the course of these meetings, be they three or be they ten, did Mr. Lamula mention the prices of these securities. She said I have 100,000 to invest and to Mr. Lamula she said, "John, I don't know, I have to rely on you."

Then it became a problem for him how to maximize his profit out of the $100,000 that was available to him from her to invest.

He never told her that these securities were over-the-counter securities.

Now, what does that mean? As the Court has instructed, mentioned earlier, there is a difference between securities which are bought and sold on the New York Stock Exchange or the American Stock Exchange and securities which are bought and sold over-the-counter.

Basically, there is more regulation with regard to the listed stocks. There is more supervision with regard to them. There is more information available. You can open the New York Times any day or even the Daily News or the Post and see the listings of most or all of these securities. Most over-the-counter securities you can't check prices on. You can't find that information. And so it was important for her to know that over-the-counter securities were being recommended to her where the information was scanty.

She wasn't presented any alternatives for purchase. It wasn't recommended she leave her money in that certificate of deposit in the spring of 1974 and see what happened to the market in those turbulent times. Instead, she was told "Buy my convertible debentures."

Those convertible debentures we will show with expert testimony are known by one name in Wall Street. They are called junk bonds.

MR. GOLDSTEIN: Objection.

THE COURT: On what grounds? He is going to prove they are called junk bonds. That's evidence.

MR. BLUM: I am going to call that.

MR. GOLDSTEIN: This is summation.

MR. BLUM: This is referring to testimony the expert witnesses will provide.

THE COURT: Mr. Blum, that particular sentence that you said you will prove it is proper, but you did have a few minutes before a statement closer to argument. Limit yourself to what you are going to prove, not the arguments to be made from it.

MR. BLUM: Yes, sir.

We will show no other securities was mentioned. There wasn't mention of a stock of any other corporation, there wasn't mention of preferred stock, there wasn't mention of bonds of corporations like A T & T or any other corporation. Treasury bonds were not discussed. Savings accounts were not discussed. They weren't recommended to her.

There were other factors that were important. The word subordination, and these were all subordinated bonds, wasn't explained to her and you will hear again from expert testimony that what subordinated means is that every other loan of the company must be paid off first, they have to pay off their banks first, and they have to pay off any other borrowings before they pay off these obligations. So instead of being as safe -- the testimony you will hear from the experts that we will present will show that the fact that these were subordinated obligations was a very important piece of information, and that wasn't told to her.

There was no mention of the ratings of these securities, which anybody you will hear from the witness stand, anybody who works in the securities market looks to start with, how is this rated by the service which do a job of reviewing and providing to the securities business a recommendation of the investment grade of the securities? How are they regarded? Mr. Lamula brushed aside, you will hear, any requests for such information and said he wasn't going to provide it, he preferred to rely on his own evaluation of these companies.

You will find that he failed to inform Mrs. Grupe that he was maintaining a special kind of business in these securities himself. He didn't keep them in his own inventory, as you will learn, for the most part. He didn't run a risk, you will learn, because he went out and bought these securities for his own account only when he knew that he could sell them to Mrs. Grupe. In short, we will show that this was virtually from the point of view of John Lamula a riskless transaction. When he knew that he had $100,000 of her money to work with, then he went out and bought certain securities that he knew he could sell to her because having not told her the prices as we will show, he had the opportunity as market-maker and seller to fix that price.

Now, this case, as the judge has mentioned, involves fraud under the securities law. Normally one thinks of fraud as being what one tells another person that is untrue, and there are things said that were untrue, I will come to that in a moment. But fraud can also be not telling somebody something they need to know so as to mislead them and deceive them.

Fraud can be to tell less than all that you know. Fraud, as we will show took place here, can involve saying that you know something when, in fact, you don't know it, and again we will show that that took place here.

Mr. Lamula, we will show, said "I am on intimate terms with the executives of every one of these companies. I know that they are good securities."

If he was on imtimate terms with them, then he must have known, as we will show, that they were in no way suitable for this lady's sole investment portfolio, all the money she had at her age and in her condition of life and at that time. He must have known that they weren't suitable or if he didn't have those contacts then he was misrepresenting when he said that to her.

We will show Mrs. Grupe gave him the discretion to make the choice.

Let's turn to the other side of it. What is it that Mr. Lamula has said in answer to this? He said that he gave her the information. But we will show you that the information he gave her was either incorrect or was riddled with omissions.

He says, also, that he dealt with her at the market price so why is she complaining about her investments? I will come back to that in just a minute.

Finally, he said that when she decided to sell out, she didn't sell the securities in proper fashion. I will come back to that in a minute.

Let me turn to what I think the evidence is, establish the reason that Mr. Lamula did this. We will show that he marked up these securities -- that is, fixed the price of those securities at which they were being sold to Mrs. Grupe at such a level as would provide him an outrageously high profit.

We will show that while there are standards in the securities business established by the National Association of Securities Dealers, a regulatory agency to which Mr. Lamula and his organization belong, which say that the most you can go, barring exceptional circumstances, is to increase by 5 percent, that Mr. Lamula, in fact, took a markup that ran as high as 16 or 17 percent. That is, a profit of 16 or 17 percent. And that, in fact, there was no instance when he was as low as 5 percent.

We will show that every single factor the National Association of Securities Dealers has established as the basis for determining what a dealer can charge his customer tended to make the amount of the markup, the profit, less.

For example, was there a risk involved? That's one of the standards. We will show there was no risk because it was only when he knew he had his customer lined up that he went out to buy these securities, and you will hear testimony that that is called a workout market, and that, too, was something of which he didn't advise her.

So we turn to what he paid for these securities, and we discover, as you will hear from the testimony, that he went out and bought the bulk of these securities two days before he sold them to her. No risk in that. He had the complete control, as you will see, over the timing of the sale.

And although he bought them at one price, he sold them at prices which ranged above that from 6 to 16 percent higher. But more than that, we will show that as to several of these securities on the same day that Mr. Lamula was charging her high prices, he was offering to sell to the public at lower prices.

Now, how does a broker do that? There is a publication put out by something called the National Quotations Bureau. It's known in the trade as either the yellow sheets or the pink sheets because the originals are yellow if they are bonds or pink if they are stocks. Everyday members of the NASD who are market-makers, as Mr. Lamula was, send by runner to the National Quotations Bureau an indication whether they want to be listed as a market-maker for that security on the sheets which are printed and distributed by the following morning and they also indicate if they wish the price at which they will either buy or sell the securities in question.

We will show that as to several of these very same junk bonds Mr. Lamula indicated on those same days, the days in which he was buying them so that he could sell them to her a day or two later, and on the day itself, and on the day after, he listed himself as prepared to sell to other dealers at much lower prices.

So he was setting her up as a mark and took her as a mark for a profit and, of course, he never discussed that with her, and that, too, we contend is fraud.

We go further than that. Mr. Lamula said that he was selling at market prices, and he says he called other dealers to find out what they were charging to their customers or what quotations they would give, and he even set up some records that show what those quotations were at the time he sold them to her.

Well, ladies and gentlemen, we examined the yellow sheets, and you will have them offered in evidence to you, which were the publications in which these other dealers also listed what they would buy or what they would sell for, and you will find that in every single instance, every single instance, I believe, those dealers who listed prices and who Mr. Lamula indicated were the dealers whom he called to make sure he was charging a fair price to Mrs. Grupe, were actually charging much less to any customer who came to them and asked for a bid on what he would sell them to them for.

Once again we have this further piece of evidence as to why the scheme was entered upon. It was entered upon to obtain a profit, and we believe the biggest profit that could be obtained from $100,000, and could be obtained only from securities where Mr. Lamula himself controlled the price. Trat's why we assume A T & T and others weren't involved. That's the package he dealt with.

None of this was known to Mrs. Grupe at the time, and it was only after she incurred the losses she found out about this, but at least it established, and I think will establish to you, what the intent of Mr. Lamula was when he engaged in this program.

Where did the money come from the $100,000? You will recall it was in a certificate of deposit with the bank. That certificate of deposit didn't mature, the money didn't come back from the bank, until July 15, 1974. So, again, you will hear testimony Mr. Lamula recommended to Mrs. Grupe "Well, you can borrow against that certificate of deposit, just go up to the bank and make out a note against the full amount of the $100,000, then they will charge you interest, the interest will be somewhat less than the interest they are paying you, so you will still have a few dollars and this investment in junk bonds." Of course he didn't call them that.

So Mrs. Grupe went to the bank, and a borrowing was made, and that is where the money came from. Mrs. Grupe paid $1117 of interest, and that, too, is damages we want back in addition to the 31 or $32,000 that she lost in the sale of these securities.

Turning to the sale of these securities, the claim is made that they weren't disposed of properly. We will show you what Mrs. Grupe did. We will show she went to Mr. Lamula and said, "I want to know what the truth is about these bonds now, I have learned what I have been told," and Mr. Lamula said, "I think they are just grand things." She said, "What's the value?" and was told something other than what she had learned and she said I want them sold, and he refused to sell them.

She turned to a reputable brokerage firm, one of the largest in New York and the country, L.F. Rothschild & Co. and said please dispose of these securities for me, and they were sold at the market prices which were available and that money was credited to her, and that, ladies and gentlemen, brings us to the damages that we seek.

Again, in sum, you will see an unsophisticated customer seeking advice from someone whom she came to trust and rely on, and indeed became fond of, and that she relied on him utterly for advice in the securities business. An intelligent woman but a woman who did a foolish thing perhaps, although each of us has to trust one person or another at one time, and this was an instance where that was done.

Securities were sold to her which were not what she was told that they were. They were not investment quality. They were considered either speculative or uncertain. They were known in the trade as junk bonds because of their terrible ratings. Each of these corporations was in a terrible debt situation. We will show that to you. Each of these corporations itself had borrowed to the hilt. Many of these corporations, and we will show this to you, had stopped paying dividends on their common stock and that, too, we will show was not told to Mrs. Grupe.

So this group of securities was sold to her by Mr. Lamula acting for himself without telling her what the prices were until the whole transaction was complete and without telling her how he arrived at the prices, and when she learned about it, which was three months later, she went into the market and sold, and the market was already down, down of course because the demand for these securities was so slight that naturally when she went in to sell them, that is known as a thin market situation, and again you will get testimony from expert witnesses as to that, the market was so thin the moment she went out to sell them of course they were hard to sell, so the losses were made still greater because of that.

She comes before you and says I am entitled to the damages I have suffered. The damages she suffered are the $31,000 and change plus the $1100, and those are the damages that are being sought, together with any punitive damages that the jury in its discretion may wish to award.

THE COURT: Does the defendant wish to make an opening statement?

MR. GOLDSTEIN: Yes, your Honor.

Ladies and gentlemen of the jury. You have heard Mr. Blum testify what -- state what he is going to prove.

I represent the defendants. I have to wait until after he has presented his case to present my case. I cannot tell you what I am going to prove or disprove until I have heard his testimony. That's going to have to wait.

However, Mr. Blum mentioned junk bonds and over-the-counter market and I think painted a pretty bleak picture.

Well, we will prove that over-the-counter market includes United States securities, United States bonds, which are not exactly junk bonds.

By the same token, Mr. Blum stated he is going to show you ratings, Moody's, Standard and Poor's, how these were not rated or poorly rated. We will show that Standard and Poor's and Moody's prepares statements -- invests according to what their customers want. Who are their customers? The brokerage houses. If you don't have A T & T or if you don't have an IBM stock, you have a stock that is admittedly small. What's the definition of small in this case? Maybe sales of 50 to $100 million a year.

They are not going to go out and do much work because there is not much trading in these.

Now, Mr. Blum stated that he was going to show that Mr. Lamula did not try to get Mrs. Grupe into other investments. Well, supposing he had got her into Grade A investments. We will show what would have happened to those. Did you ever hear of Penn Central, New York City bonds, which were very highly rated, W.T. Grant, big corporations, highly rated by these same rating services.

No, Mr. Lamula did not put her into those, and I think if he did, perhaps we wouldn't be hearing about Standard and Poor's and Moody's at this trial.

THE COURT: Counselor, you are doing now what Mr. Blum is doing, you are arguing and not making an opening statement.

MR. GOLDSTEIN: Sorry, your Honor.

What you will hear is that Mrs. Grupe wanted to invest money. She got something like $150,000 from her divorced husband. She had money to invest, $100,000 of that. She had put it in a certificate of deposit. You will hear testimony that the certificate of deposit then paying about 8 percent was to become due in June or July of that year. You will hear testimony that the bank had already told her that when it would be renewed it would be at 7 percent, 1 percent less.

Now, there is a discrepancy as to how many times Mr. Lamula met with Mrs. Grupe. There is no discrepancy that all meetings took place in the room of Miss Emerson, whose testimony you will hear. All of the meetings. Miss Emerson was present at every one. There is no dispute about that.

The only dispute is how many meetings took place. Mrs. Grupe, I think, would testify two to four, maybe less. Mr. Lamula, maybe six to eight. Miss Emerson, about the same.

Mr. Lamula will testify that he went over each and every one of these issues with Mrs. Grupe, every one, and he kept on saying to her, "Do you understand it? Tell me. Tell me what you understand to be the fact?" And Mrs. Grupe repeated it.

And after a time Mr. Lamula assumed that Mrs. Grupe knew what he was talking about because the questions stopped and Mrs. Grupe indicated, "Yes, okay, I am satisfied. I am acquainted with these issues now."

It will also be testified that Mrs. Grupe in the first instance said, "How are these rated? How are these rated by Standard and Poor's and Moody's," and you will hear Mr. Lamula say, "I don't use those ratings. Those ratings don't mean anything as far as the issues I am going to put you in, as far as other issues. Yes, they do a background check on some corporations, big giants."

But, as you will hear, Mrs. Grupe wanted a certain income per month. She wanted to supplement her income she was getting from her job. She said, Mr. Lamula, this is what I require, and based upon what she said, Mr. Lamula said, "You are not going to get this from conservative issues. 'Conservative' -- A T & T or IBM. You are just not going to get the money you want."

In addition, you will hear that Mrs. Grupe had one specific objection. She said, "Under no circumstances are you to put me in stocks. My family was wiped out during the Great Depression by stocks. I do not want stocks."

She didn't say, "I don't want anything below

A T & T, I don't want anything below IBM." She said, "No stocks, period." End of conversation.

And then dramatically you will hear how after Mrs. Grupe sold out these bonds she went into stocks, common stocks, and rightfully you will have to determine then why.

Now, these were small companies. There will be testimony that these were 50 to $100 million companies, and these by standards used in the marketplace are small. You are not talking about a billion dollar company like A T & T or General Motors. They issued bonds. You will hear that these companies were in business, twenty-five, thirty, forty, fifty years. These were not fly-by-night outfits.

You will hear Mr. Lamula was intimately acquainted with each and every company, that each and every company had paid interest religiously on the day they were supposed to. This is the kind of company, he will testify, he put her into. Why? Because he knows something about the company. He knows who the officers are, he knows their financial statements, he knows how much they need for what's called a sinking fund. He knows anything about them. You ask him anything about those companies, he will give you an answer. Other companies he did not know about, he wouldn't recommend.

He will testify, no, I did not recommend she go into silver, real estate or oil. Why? He knew nothing about these. Perhaps these were better investments for her, but she came to Mr. Lamula and Mr. Lamula could only tell her what he knew about, and he will testify, "This is my area of expertise."

He will testify, "Yes, I could have spent three weeks just going over everything in the world she could have invested in, but that's not many."

How could he tell her about real estate? He will testify he doesn't know anything about real estate. She came to him and he recommended these issues.

There is no question that he recommended them, among others, and after conversation with her, she chose the issues he was to buy.

It's also true he did not tell her, "Well, you are going to get this issue at $59, and you are going to buy this one at $100."

He will testify nobody can say that. If you were going to buy A T & T stock, you don't know what the market is going to be tomorrow. Likewise in this case. You will hear testimony that Mrs. Grupe had this $100,000 to invest, and he invested it for her. A little less than

$100,000 initially and then afterwards built up her portfolio.

You will hear she got interest every time she was supposed to, and you will hear about the quality of these issues.

You will also hear that suddenly Mrs. Grupe decided to sell these issues in one fell swoop. Now, you will hear Mr. Lamula's testimony about her conversation with him, and it differs quite a bit. Mrs. Grupe came to him and said, "John, I don't like these, sell them."

Mr. Lamula did not say "No, I will not."

He said, "Fine, I think it's a mistake, but I will take you out gradually so you will get the most for your money. I will take you out over a period of time."

That is his testimony. Not to go into the market the next day without knowing what it's going to be and sell everything all at once.

Yes, you will hear testimony on any given day any stock could be up or down, any which way. You will also hear that in the summer of 1974 the stock markets were at a very low point and that whoever sold anything at that time would most likely take a loss. Yet, arbitrarily these stocks were sold -- these debentures were sold during that time.

Now, our basic case is that Mrs. Grupe came to Mr. Lamula through Miss Emerson. She wanted investment advice.

You will hear Mr. Lamula say, "Look, this is what I recommend. Don't buy it through me, go to your broker in Buffalo."

No, she didn't want to. "Go to somebody else. You know, I would take your business, but if you feel that you want somebody else, go to somebody else."

No.

You will hear testimony that she has a son who is an attorney and Mr. Lamula said, "Look, let me discuss it with him." And she said, "No, I don't want my family to know anything about this. You handle it for me. I trust you. You take it."

And so he did.

Now, one thing which you have to bear in mind, Mr. Lamula is in a business, he has a right to be in a business, and in a business you expect to make a profit. And Mr. Blum has harped on excessive profits. You will hear that Mr. Lamula did make a profit in dollars. If you look at the sheets and you take one number and another number, you will see a profit. You will also hear that actually it wasn't a profit at all because Mr. Lamula will testify how much time and effort went into this, and that when all was said and done he lost money on it, he didn't make any money. That will be his testimony.

Now, Mr. Lamula is active in politics. He works with legislative committees. He helps them propose laws. And he will testify about this. He will also show you that he is not in one of these jobs he is drawing down a fantastic amount of money and living off the fat of the taxpayers. He will show you his salary really costs him money, that for the little he gets after he pays expenses he has nothing left.

All that I ask is that you maintain an open mind. The defendant is at a disadvantage. He has to wait patiently while you hear Mrs. Grupe and her witnesses expound their case. If you would decide the case at the end of plaintiff's case, very possibly you would say, "Well, it sounds wonderful."

Please keep an open mind until after you give us our chance. We have to come to bat. Don't make a decision until after you hear what we have to say.

Now, remember, outside of cross examination we cannot put on witnesses, we cannot present our case until after Mr. Blum states that he has finished, plaintiff rests. Then we present our case.

I ask you to observe the witnesses. A lot of this case will be decided on common sense. You will hear that Mrs. Grupe is a well-educated woman, has a master's in education, went to school. Very educated. Keep that in mind when you hear her testimony, when you hear what she says, and I ask you to ask yourselves is this the testimony of a woman who went beyond college, who is well-educated? Does this make sense? Does her testimony make sense? Is it logical? Think very carefully. Bear that in mind.

You will also scrutinize my witnesses, as you should. You have to decide in the end who is telling the truth, and who is not, who should you believe where there are conflicts. All that I ask is that you wait until the end of the case to make any final decision, but look at each witness very, very carefully and keep in mind that logic, and logic alone, will have a great deal to do with this case, if not the whole case.

Thank you.

THE COURT: Since it's going on toward 1 o' clock now, I think we will recess for lunch before calling the first witness.

Let me explain to you, ladies and gentlemen, what our housekeeping arrangements will be.

We will commence court at 10 o'clock each morning and it's important that you are all here before 10 o'clock because if only one of you is late, all the rest of us have to wait.

We will recess at five in the evening everyday, and we will take an hour for lunches, usually between 1 and 2 o'clock.

There may be deviations from this schedule but you will normally be advised in advance of the fact that we are starting late or ending early, whatever the case may be.

It's important that you do not discuss the case now or at any time until it's been submitted to you for deliberation, for final deliberation, with anyone, with each other, members of your family, or anyone else. You must not talk about the case until the case is concluded and you have been sent to the jury room to deliberate on it.

The jury may now be excused for lunch. Be back here by 2 o'clock, please.

(Jury excused.)

THE COURT: Is there a motion to exclude witnesses or anything of that nature you want to take up at this time?

MR. GOLDSTEIN: Yes, your Honor, I would so move that witnesses be excluded from the courtroom until after they have testified.

THE COURT: Are there any witnesses present?

(No response.)

THE COURT: Apparently not.

All right.

(Luncheon recess.)

AFTERNOON SESSION

2:00 p.m.

(In open court, jury present.)

THE COURT: I understand one of our jurors got stuck on one of our elevators, which is an unfortunately common occurrence in this building. The elevators are a trap for the unwary. I wouldn't suggest trying to walk up, but if you do get trapped and you are not out after, say, ten minutes and you know we are waiting for you, try to get on the phone and tell them to convey the word to the Clerk in Room 519 that the juror is trapped and has been imprisoned.

All right, call your first witness.

MR. BLUM: I call the plaintiff, Bernice Grupe.

BERNICE C. GRUPE,

the plaintiff called as a witness in her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLUM:

Q. Mrs. Grupe, you are the plaintiff in this case?

A. Yes, sir.

Q. Where do you live?

A. 329 Evans Street, Williamsville, New York.

Q. How long have you lived in Williamsville?

A. I have lived there two years. At that address, fifteen months.

Q. How old are you?

A. Sixty.

Q. Have you been married?

A. Yes, sir.

Q. How many times have you been married?

A. Twice.

Q. Do you have any children by either of those marriages?

A. Yes, sir.

Q. Who are they, what are their ages, and where do they live?

A. I have three sons, one thirty-five, one thirty, and one twenty-eight.

Q. Do any of them live with you?

A. No, sir.

Q. When did your second marriage take place?

A. 1936.

Q. Second marriage?

A. I am sorry, I apologize. 1967.

Q. How did that marriage end?

A. Divorce.

Q. When did you and your husband separate?

A. We separated in July of 1974 -- 3, and were divorced December 13th of 1973.

Q. In connection with that marrage settlement, was there an agreement signed?

A. Yes.

Q. As a result of that agreement, did you receive any payment?

A. Yes, sir.

Q. What payment did you receive?

A. $150,000.

Q. How much of that came to you?

A. $138,000.

Q. When did you receive this sum of money?

A. It was in two payments, $20,000 in July and the balance in October.

Q. When you received those sums, each of them, what did you do with them?

A. Well, the first sum of $20,000, I didn't have a car, I didn't have a place to live, I used it for emergencies and necessities.

And the other $100,000, $11,000 I gave to my son for a down payment on a house, $100,000 I put in a certificate of bank deposit -- a certificate of deposit in a bank.

Q. After you and your second husband separated, did you have any employment?

A. Not immediately but soon afterwards.

Q. Where did you go to live after you and your husband separated?

A. With my son in Lockport.

Q. Where had you lived with your second husband?

A. In Hohokus, New Jersey.

Q. Then afterwards you went to Lockport, you say?

A. Yes.

Q. Where is Lockport in the State of New York?

A. Twenty miles north of Buffalo. It's not considered a suburb, though.

Q. And Williamsville is near Buffalo, also, isn't it?

A. That is a suburb of Buffalo.

Q. Let's go back a bit in your background, Mrs. Grupe.

Before your second marriage, were you employed?

A. Yes, sir.

Q. What was your employment?

A. I had several --

Q. Let me withdraw the question and go back a little earlier.

Did you go to college?

A. Yes, sir.

Q. Where did you go to college?

A. Alfred University.

Q. Did you graduate?

A. Yes, sir.

Q. When was that?

A. 1936.

Q. Where is Alfred University?

A. That is in the Southern tier of New York State. Near Olean.

Q. What was your subject or major when you went to college?

A. English.

Q. When you graduated, what did you do?

A. I raised a family.

Q. Were you married then when you graduated?

A. No, sir.

Q. From the time you graduated until --

A. I am sorry, I taught for two years. I taught English for two years and then married and then had a family.

Q. Where did you teach?

A. First I taught in extension work for Alfred University for one year and then in Friendship Central School for another year.

Q. Where is Friendship Central School?

A. In the same area as Alfred University.

Q. At that time did you own any stocks or bonds?

A. No, sir.

Q. Did you own any real estate right after you graduated from school?

A. No, sir.

Q. Did you have any investments of any kind at that time?

A. No, sir.

Q. I think you said after a year or two after you graduated you married; is that correct?

A. Yes, sir.

Q. When the children began to come, did you work or cease work?

A. No, I did not work.

Q. You did not work?

A. No.

Q. What did your husband do?

A. He was a teller in a bank.

Q. Where?

A. Lockport, New York.

Q. Did there come a time when you went back to work?

A. Yes, sir.

Q. When was that?

A. I did substitute work off and on temporarily and then I went back to work in 1954.

Q. Was that in the teaching field?

A. Yes, sir.

Q. During this period of time, did your husband -- what was your husband's name, by the way, your first husband? What was his name?

A. Irving Clark.

Q. During that period of time, did he continue to be employed as a teller?

A. Yes, sir.

Q. What throughout that period of time was his salary range, approximately, if you can recall? What did he receive at the beginning and at the end of that period of time?

A. He was very confidential about his affairs. I know when I married him, he was earning $1500 a year. Other than that, I don't know.

Q. Was it your impression that it increased across the period of time he worked as a teller at the bank until

1954?

A. In small amounts.

Q. To the best of your knowledge, did he own any stocks or bonds?

A. No, sir.

Q. Did he have any investments of any kind, if you know?

A. Not that I know of.

Q. In 1954, you said you returned to work.

What did you do at that time?

A. I became -- I was an English teacher in Medina Central School.

Q. Where is that?

A. Fifteen miles from Lockport. I commuted everyday.

Q. You taught English, is that right?

A. Yes, sir.

Q. How long did you continue in that employment?

A. Four years.

Q. Can you recall what your compensation was in that employment?

A. To the best of my recollection it would be around $7,000.

Q. When that four years passed, did you find other employment?

A. Yes, sir.

Q. What was that?

A. I became a reading consultant for the Board of Cooperative Services of Niagara, Orleans County.

Q. Was that work also in the Buffalo area?

A. No, sir, it was in the same area. I mean it was in the same school system I was in.

Q. What was your compensation, if you can recall, during that employment?

A. Approximately $8500.

Q. Did you have any other source of income at that time?

A. No, sir.

Q. Did you in this period -- and we are referring to these two employments after you resumed regular work -- did you at any time own stocks or bonds?

A. No, sir.

Q. Did you make any investments?

A. No, sir.

Q. Did you own any interests in real estate?

A. I was part owner on a house that wasn't paid for.

Q. Who was the other owner of that house?

A. My husband.

Q. Was there any other real estate anywhere in which you had any interest?

A. I bought a lot in Port Charlotte for $10 a month and took ten years to pay for it.

Q. Where is Port Charlotte?

A. In Florida.

Q. Have you ever been to that lot?

A. I have since, yes.

Q. Since when? When did you visit your holdings in Port Charlotte?

A. During my marriage to my second husband. He didn't believe it existed.

Q. Have you ever received any income from that investment?

A. No, sir.

Q. Are there any other interests in real estate which you owned at any time?

A. No, sir.

Q. During this entire period of time from your graduation from college until this second employment for the County System, to the best of your recollection now, what was the largest amount that you had in any bank account which you had access to?

A. It would probably be approximately $500.

Q. You took this second employment which you have described.

Had there been any change in your educational status? Did you go back to school at any point?

A. Yes, sir.

Q. When was that?

A. It was -- I received my education -- my Ed.M. in 1957.

Q. Where did you receive that from?

A. University of Buffalo.

Q. When did you finish this second employment after you resumed work with the County organization that you have described? When was that and what did you then do?

A. I want to be careful about the dates. I was at that position for four dates then I went to Maryvale Central School as director of language arts which is another suburb of Buffalo.

Q. How long were you with Maryvale?

A. Four years.

Q. Am I correct in my arithmetic that that takes us to sometime in the early or middle sixties?

A. Yes, sir.

Q. What was your compensation with Maryvale?

A. Approximately 10,500.

Q. Did you have any other source of income?

A. Yes, sir.

Q. What was that and where did it come from?

A. I was an educational consultant for IBM.

Q. What did you do for IBM?

A. I was on a per diem basis for IBM. I was an educational consultant who was sent around the United States teaching teachers how to teach reading workshops.

Q. What was the connection between this and IBM?

A. IBM bought out Science Research Associates whom I worked for, and they kept me on the staff.

Q. When did you commence that consultant work?

A. It must have been approximately 1960 because I was with them seven years.

Q. What compensation did you receive, to the best of your recollection, annually from them across that period of time?

A. It would be difficult to figure out annually, Mr. Blum, because I was just called at certain times. I would make maybe 3,000 in the summer and $50 a day plus expenses everyday I worked for them, but it was nothing definite.

Q. To the best of your recollection in any of those seven years or so, what was the largest sum you would earn?

A. I would guess approximately $4500

Q. What happened in 1967?

A. I remarried.

Q. Did you cease employment at that time?

A. Yes, sir.

Q. You did not resume employment until after that marriage, is that correct?

A. Yes, sir.

THE COURT: Mr. Blum, we have never disposed of Mr. Clark.

MR. BLUM: Let me ask that question.

Q. At some point, you and Mr. Clark were divorced, is that correct?

A. Yes, sir.

Q. When was that?

A. 1967.

Q. And you remarried at that point to Mr. Grupe, is that correct?

A. That's right.

Q. In connection with your divorce from Mr. Clark, did he undertake to pay you any alimony?

A. No, sir.

Q. Did he give you any lump-sum payment?

A. No, sir.

Q. What was his employment at that time?

A. Sales manager of a company.

Q. To the best of your knowledge, what was his income at the time?

A. I have to tell you I don't know.

Q. Did you receive any property from him in connection with the termination of your marriage to him?

A. The house was joint in both our names. That's everything.

Q. Yes? And what happened with the house?

A. My second husband bought out his share.

Q. Bought out your first husband's share of that house?

A. Yes, sir.

Q. And so you came to own that house outright, is that correct?

A. Yes, sir.

Q. What's happened to that house?

A. I gave it to my son.

Q. Which son?

A. My oldest son, David, thirty-five.

Q. Does he live there now?

A. Yes, sir.

Q. Does he pay you income from it?

A. No.

Q. During the period of your second marriage, did you have any income of your own?

A. No, sir.

Of my second marriage?

Q. During your marriage to Mr. Grupe.

A. My teacher's retirement, but it didn't start until I had been married three years.

Q. What was the sum which you received from the Teacher's Retirement Fund?

A. The exact sum is $1999.99, or 1,9 -- $2,000 a year.

Q. $2,000 a year?

A. Yes.

Q. And do you continue to receive that sum?

A. Yes, sir.

Q. Did you have any other source of income during your marriage to Mr. Grupe?

A. Before I gave my son the house, I rented it to him for a year for $100 a month.

Q. And apart from that and your pension then, was there anything else?

A. No, sir.

Q. Did Mr. Grupe give you any allowances while you were married to him?

A. $400 a month to run the house on.

Q. Was there any other allowance or sums that he gave you?

A. No, sir.

Q. Did he give you any gifts of money?

A. No, sir.

Q. Did he give you any gifts of stock?

A. No, sir.

Q. Or bonds?

A. No, sir.

Q. Or any other kind of securities?

A. No, sir.

Q. Now, during the period of time from the date of your graduation from college until the time of your separation and divorce from Mr. Grupe, did you make a practice of reading any financial journals, bulletins or periodicals?

A. No, sir.

Q. For example, did you regularly read Barron's?

A. No, sir.

Q. Or Business Week?

A. No, sir.

Q. The Wall Street Journal?

A. No, sir.

Q. Ever seen the Wall Street Journal?

A. Yes, sir.

Q. Where did you see it?

A. My husband subscribed to it.

Q. Did you read it?

A. No, sir.

Q. Forbes Magazine?

A. No, sir.

Q. You say your husband bought the Wall Street Journal or subscribed to the Wall Street Journal.

You are referring to Mr. Grupe, is that correct?

A. Yes, sir.

Q. Did Mr. Clark subscribe to any of these periodicals?

A. No, sir.

Q. Were there occasions when you discussed or rather when your second husband, Mr. Grupe, discussed his finances with you?

A. Maybe a casual remark occasionally but never a discussion.

Q. To the best of your knowledge, did he invest?

A. Yes, sir.

Q. During the period of your marriage with him, was there any time when you made any investment?

A. Once.

Q. And what was the circumstance of that occasion?

A. Well, I had some money from my retirement, $500, and I asked a broker to invest it in something, I didn't care what.

Q. Now, where did you find the broker that you asked to invest it in something?

A. He was my husband's investment broker.

Q. And what did you do, just call him?

A. No, sir. He used to come over to the house about once a month so that my husband wouldn't have to come downtown New York. He was a neighbor.

Q. The amount of that investment again was what?

A. $500.

Q. What was the investment in, do you know?

A. I know it was in oil.

Q. What kind of oil?

A. I wouldn't know, sir.

Q. Was it a stock or a bond or a barrel of oil?

A. The only thing I can tell you for sure is it was out of the country, that's all I know. It was in

Australia.

Q. Do you still own that?

A. Yes, sir.

Q. Did you ever receive any dividends from it?

A. No, sir.

Q. Or any other kind of income from it?

A. No, sir.

Q. During your life, have you ever run a business?

A. No, sir.

Q. While you went through your education at any stage did you ever take a course in business administration?

A. No, sir.

Q. Ever study accountancy?

A. No, sir.

Q. All right. Now, after you and your husband had separated and you had this sum of money, where did you go? You went to Lockport, you say. What did you do in Lockport?

A. Well, before I went to Lockport, I stopped in Albany.

Q. Why was that?

A. Because I used to work for the State Education Department.

Q When was that?

A. Just before my marriage.

Q. I see.

Was that when -- referring to the State Education Department, was that the county position to which you referred or was that some other position?

A. No, sir, that was after I left Maryvale as director of language, I went to the State Education Department.

Q. What did you do there?

A. I was an associate in the Bureau of Reading.

Q. And your compensation in that position was how much?

A. Approximately $13,500.

Q. So you went back to Albany and what did you do?

A. I went back to see if I could get a job in the State Education Department.

Q. Did you find employment there?

A. No, sir.

Q. What did you then do?

A. Walked across the street to the New York State Senate and applied for a job.

Q. What happened?

A. I got it.

Q. Doing what?

A. As a correspondent for Majority Leader Warren Anderson.

Q. What kind of job was that as a correspondent? What does that mean?

A. Constituents have problems throughout the State, voters have problems, they need help solving them. They write to the Senator for help.

One example would be they can't get their books from the blind library. You would get them for them. You would write them a letter and that kind of thing. You solve problems for constituents.

Q. What compensation did you receive in that employment?

A. $150 a week.

Q. Was there any period of time for which you were hired or was it an indefinite employment?

A. It was just for the session, as long as the Legislature was in session.

Q. Where were you staying in Albany? Where did you live?

A. At the DeWitt Clinton Hotel.

Q. When did your employment in the State Legislature commence?

A. I believe the exact date was January 9th, of --

the year escapes me. That would be two years ago. That would be 1974.

Q. Did there come a time following that when you met the defendant John Lamula?

A. Yes, sir.

Q. When was that?

A. Approximately March.

Q. Where did that meeting take place?

A. In the apartment of Dorothy Emerson.

Q. Who is Dorothy Emerson?

A. Dorothy Emerson was head of the stenographic pool of the Senate.

Q. How did you happen to meet Dorothy Emerson? By the way, is it Miss or Mrs. Emerson?

A. Miss.

Q. How did you happen to meet Miss Emerson?

A. My boss, the woman I worked for, Helen Williams, told Miss Emerson she thought I was someone she would like to know, so Miss Emerson called me and invited me to her apartment. I had never met her.

Q. Where did she live?

A. In the same hotel.

Q. I see.

How long had she been employed at Albany, in

Albany, if you know?

A. I don't know, sir.

Q. Was she also a session employee, if you know?

A. No, sir, I believe she was annual.

Q. How did she come to introduce you to Mr. Lamula?

A. Well, we got to be very good friends, and I didn't know many people and she used to invite me to dinner very often, and during the course of the conversation I told her some of my personal affairs, which was what was I going to do when this money came due on the certificate of deposit.

Q. You --

A. I didn't finish the question.

Q. I am sorry.

A. And she said she knew someone who could advise me, and that's how I got to meet Mr. Lamula.

Q. The person that she knew, the person that she recommended then, was Mr. Lamula?

A. Yes, sir.

Q. I see.

Now, when, once again, was this first meeting?

A. I can't recollect the exact date. It was March or April.

Q. Now, how often did you see Miss Emerson during this period of time in the beginning of 1974 when you were a session employee?

A. I would say daily.

Q. Would you spell out the routine as far as it concerned Miss Emerson?

A. Her office was in the same building. We would often see each other in the office for a cup of coffee, and she almost invariably invited me for dinner.

Q. Did you ever invite her to your place for dinner?

A. I had no way to do that. She had an apartment. I just had a room.

Q. Did you go to work together each day?

A. No, sir.

Q. When during the course of the day, what time of the day, was this first meeting with Mr. Lamula?

A. Approximately 8 o'clock in the evening.

Q. And it took place in Miss Emerson's apartment?

A. Yes, sir.

Q. What did her apartment consist of? How many rooms?

A. There was a bedroom, a living room and a bath and a very small kitchen.

Q. So this took place in the living room of that apartment, is that right?

A. Yes.

Q. In the DeWitt Clinton?

A. Yes.

Q. Describe to us, if you can, what you recall of that first meeting with Mr. Lamula. What was said by him, by you, and by Miss Emerson, if she participated?

A. Mr. Lamula knew why he had been asked there, to talk to me about financial affairs. Miss Emerson said very little, if anything. And then most of the conversation was about the Legislature, what was going on in the Legislature.

Q. Was it your understanding that Mr. Lamula had some connection with the Legislature?

A. I knew that, sir.

Q. What was it that you knew?

A. Miss Emerson said that he was financial adviser to the Senate, and which was another recommendation.

Q. What did Miss Emerson tell you -- let's go back a step or two before this meeting -- what did Miss Emerson tell you about Mr. Lamula, if anything?

A. What I have just stated, that he had invested for -- that he had invested money for a lot of people in the Senate successfully, that she had invested with him herself.

Q. Now, returning to this meeting, what was the discussion, if any, that took place of financial affairs at that meeting, the first meeting with Mr. Lamula?

A. To the best of my recollection, there was a discussion of the certificate of deposit and the danger of holding on to it.

Q. What was the discussion, if you can recall? Who spoke, who said anything, what was said?

A. Mr. Lamula said that Franklin Trust had failed, that other banks -- to the best of my recollection this is what went on -- that other banks were liable to fail, that if they did, my certificate of deposit would be worthless and I would be penniless.

Q. What did you tell him about your assets, if anything, at that meeting? What did you say?

A. I told him I had a certificate of deposit of $100,000 that I wanted to invest.

Q. What did you say about it, just I have a certificate of deposit?

A. And I don't know what to do with it.

THE COURT: What bank was it in?

THE WITNESS: The Bank of New York, Albany.

Q. When did that certificate of deposit come due?

A. July.

Q. Did you tell that to Mr. Lamula?

A. I must have. Yes, I am sure I did.

Q. Did Mr. Lamula at this meeting discuss anything else about financial affairs?

A. I know I was impressed at that first meeting with his knowledge of investments and how many people he knew and how widely traveled he was and how competent he was. He did most of the talking.

Q. Well, was there, -- for example, did he talk about John Lamula Investors, his company?

A. Not that I remember.

Q. Did he tell you anything about his own background in investment?

A. That he had made investments, but I can't recollect exactly, sir.

Q. Well, at the conclusion of that meeting, what was your understanding about Mr. Lamula's function in the investment business?

A. That he was in a position to make investments for people, and he was very knowledgeable in the field.

Q. Did you have any discussion with Mr. Lamula at that ~~time~~ about the kind of investments that you wanted?

A. Yes, sir.

Q What was that discussion?

A. I made it very clear that I did not want any stocks.

Q. I see.

What did you say about stocks?

A. I said my family had lost stock in the crash and we had been brought up to believe not to get in the stock market.

Q I see.

Was there any other discussion you had about the kind of investments that you wanted?

A. I don't remember who suggested it, but bonds were discussed.

Q. What was the discussion about bonds, and, again, we are addressing ourselves to the first meeting you had with Mr. Lamula?

A. That they were much safer investments.

Q. Was that you who said that, or he, or Miss Emerson?

A. I believe the agreement of everyone.

Q. How long did this first meeting last, to the best of your recollection?

A. Approximately two hours.

Q. When the meeting ended, was there any understanding that you had about meeting again with Mr. Lamula?

A. Yes, I believe he said he would be up in another couple of weeks.

Q Did you understand that to mean that you would meet with him again in another couple of weeks?

A. Yes, sir.

Q Was it your expectation at the end of the meeting that something was going to be done about investments, this first meeting?

A. As I recollect, he said he would look around to make suggestions for me.

Q. When did the next meeting that you had with Mr. Lamula take place?

A. Approximately two weeks later.

Q. Where did that occur?

A. Miss Emerson's apartment.

Q. At what time of the day was that?

A. The same time, 8 o'clock.

Q. This was after business hours?

A. Yes, sir.

Q. Was it a weekend meeting or during the week?

A. I believe it was a Tuesday night.

Q. Who was present at this second meeting?

A. Miss Emerson, Mr. Lamula, and myself.

Q. Nobody else?

A. No, sir.

Q. At that meeting was there discussion about financial matters?

A. Yes, sir.

Q. What was the discussion?

A. Well, there was discussion about bonds and companies that Mr. Lamula was familiar with. I do not remember, I cannot recollect, names being mentioned, and -- but there was just a plain discussion.

Q. Well, is it your best recollection that names of companies were mentioned, whether or not you can recall them?

A. The only thing that I can definitely recall is he said that one of the companies had a radio station in Buffalo, which rang a bell. That's all I do remember.

Q. Did he make any recommendations to you for action at that point?

A. No, sir.

Q. Did he suggest to you that you buy things at that point?

A. He did recommend that I buy bonds.

Q. During the course of this discussion, did the term "debenture" get mentioned?

A. Probably.

Q. By whom?

A. Him. Mr. Lamula.

Q. During the course of this discussion, did you tell Mr. Lamula anything further about what it was that you wanted with your $100,000?

A. Sometime during the discussion, I did bring out the fact that I would like to get as much income as I could.

Q. And what did you say, if you can recall words, or if you can't then the substance?

A. I believe there was quite a discussion about it back and forth. I don't remember -- someplace $12,000 came up but I don't remember who said it.

Q. At some point during the course of the meeting, did you advise Mr. Lamula that $12,000 was what you were looking for?

A. Not that I recall, sir. I did say that it would be adequate and I could live on it.

THE COURT: $12,000 per year?

THE WITNESS: Yes, sir.

Q. Do you recall what Mr. Lamula's response to that was?

A. As I recollect, he said he would be able to take -- to do that.

Q. Was there any discussion at that meeting about bond ratings?

A. No, sir. Not that I recall.

Q. Was there any mention of prices or price ranges of different stocks or bonds?

A. No, sir. Not that I recall.

Q. Did Mr. Lamula suggest any United States Government bonds or bills or notes for your consideration?

A. No, sir.

Q. Was there any discussion about them as an investment?

A. No, sir.

Q. Did the term "over-the-counter" enter into the conversation?

A. No, sir.

Q. At that time, what did the term "over-the-counter" mean to you?

A. I said, as I have already stated, it was not mentioned at that time but if it had been, it would have had an unsavory connotation.

Q. What did it mean -- what did the term "over-the-counter" mean to you at that time?

A. All I know was my husband wouldn't get involved in any of them.

Q. How do you know that?

A. Because he said so, I guess.

Q. During --

MR. GOLDSTEIN: I would move to strike that whole line of testimony and answers on the grounds that the witness is herself not sure whether her husband ever made that statement and is obviously conjuring it up out of thin air.

MR. BLUM: I think she is stating the state of her mind.

THE COURT: The objection came too late. You had an objection to the hearsay but you didn't make it when you had the opportunity.

Do you recall your husband making such remarks about over-the-counter stock, this being your second husband?

THE WITNESS: That he wouldn't deal in them, yes, I do remember that.

THE COURT: The speculative aspect is now gone.

Q. During this discussion at this meeting, or indeed at any of the meetings you had with Mr. Lamula in the spring of 1974, was the term "market-maker" used by anyone?

A. No, sir.

Q During the discussion that you had at this second meeting, or indeed at any of the meetings in the spring of 1974, was the term "subordinated" discussed, if you recall?

A. Not that I recall.

Q. Do you recall any discussion at any of the meetings that you had with Mr. Lamula in the spring of 1974 with respect to the debt-capital ratio of debentures?

A. No, sir, not that I recall.

Q. Was there any discussion at any of these meetings that you can remember about convertibility?

A. No, sir.

THE COURT: Mr. Blum, it's not apparent to me whether these questions are designed to cover only the two meetings about which there has been specific testimony or about these two plus others later on.

MR. BLUM: Your Honor, they were addressed to these two plus others later on in the spring of 1974.

Q. Let me ask, Mrs. Grupe, are the answers you have given true with regard to each of the meetings you had with Mr. Lamula, whether or not there were more than two in the spring of 1974?

A. Yes, sir.

Q. Now, did you have any other meetings with Mr. Lamula in the spring of 1974?

A. Yes, sir.

Q. Be --

A. Besides these we have talked about?

Q. Besides these first two we have talked about.

A. Yes.

Q. To the best of your recollection, when was the next one after the second? When was the third meeting?

A. It would have been in two or three weeks.

Q. Once again, where did that meeting take place?

A. Miss Emerson's apartment.

Q. The three of you, I take it, were present.

Was anyone else present?

A. No one else was present.

Q. Once again, at this third meeting, was there any mention of specific bonds or debentures?

A. There could have been but none that I can recollect and can specifically name. But there could have been a discussion like that.

Q. I see.

Now, during these meetings was anything said to you, during this third meeting or the second meeting for that matter, was anything said to you by Mr. Lamula about suitability of the debentures as an investment for you?

A. I can't remember specific words but I do remember that he assured me that these were going to be excellent investments for me.

Q. What did you understand that to mean?

A. That they were excellent investments for me.

Q. Now, did you discuss the financial status of any of these companies with Mr. Lamula?

A. Not that I recall, sir, because I wouldn't have known the questions to ask.

Q. Was there any discussion that took place about connections between Mr. Lamula and the companies involved?

A. Oh, yes.

Q. What do you recall was said in any one of these three meetings about that subject?

A. That he knew the presidents, that he had visited the companies, that he knew them to be very suitable. First-hand information.

Q. What did you say to that, if anything?

A. I don't recall, sir.

Q. Before your first meeting with Mr. Lamula, what was your understanding as to the difference between a stock and a bond?

A. The interpretation I would have had was that a bond is safer than a stock, period. That's all.

Q. You don't know -- at that time you had no other impression of difference than that, is that correct?

A. No, sir.

Q. Now, at the conclusion of one or two of these meetings with Mr. Lamula, did you have any impression as to the difference, if any, between a debenture and a bond?

A. No, sir.

Q. Do you now have any impression as to the difference between, if any, between a debenture and a bond?

A. No, sir.

MR. GOLDSTEIN: I object to that question.

THE COURT: I think her present knowledge is not particularly germane.

I suggest to you gentlemen that you never enlightened the jury as to the difference between a debenture and a bond and while some of them may know the difference, I suspect some of them do not.

MR. BLUM: There will be some expert testimony on it, your Honor.

THE COURT: All right.

MR. BLUM: I think they share that in common with other people.

Q. Was there any discussion which you had with Mr. Lamula about making investments specifically at a time or in an amount at this third meeting?

A. I believe there was.

Q. When that meeting ended, what was your impression that Mr. Lamula was going to do? What was your impression he was going to do for you or about you?

A. I thought of him in the role of an investment counselor who was going to make selections that would be excellent for me in my circumstances.

Q. Did you make an effort to convey that impression to him?

A. Probably.

Q. Now, did Mr. Lamula ask you at any point whether you understood the financial matters that he was discussing?

A. He may have. I don't recollect that he did.

Q. Following this third meeting when you had the impression that he was going to select some investments for you, when did you next see or hear from Mr. Lamula?

A. If I am correct, the date would have been about May 29.

Q. And what happened on May 29?

A. On May 29 I gave him a check for -- no, I am sorry. May I go back?

Q. Please.

What happened on May 29, if you recall?

A. I believe it would be May 28. We went to the bank and took out my certificate of deposit. He went with me.

Q. What do you mean you took out the certificate of deposit?

A. Borrowed $100,000 and put it up as collateral.

Q. How did you go about doing that?

A. I called the vice president of the bank and asked him if I could do it and met with him and Mr. Lamula went with me and I took out a loan for $100,000 and left my certificate of deposit as collateral.

Q. Was there any discussion you had had prior to that discussion about borrowing on the certificate of deposit?

A. Yes.

Q. Who was that discussion with?

A. Mr. Lamula and Miss Emerson, I believe.

Q. When did that discussion take place?

A. It would have been a few days before that or a week.

Q. Well, what was said, if you can recall?

A. Well, I didn't know how to go about it, and

Mr. Lamula offered to help me.

Q. How to go about what?

A. Going to the bank and taking out a $100,000 loan and taking care of a certificate of deposit. I had never done anything like that.

Q. Was that your thought as to the way in which you could get this money?

A. It was Mr. Lamula's suggestion.

Q. What did you say to the suggestion?

A. Well, inasmuch as he had convinced me that I might lose the whole thing, I agreed to it very readily.

Q. I show you Plaintiff's 13 already marked in evidence, and ask you if you recognize this document.

A. Yes, sir.

xxx (Plaintiff's Exhibit 13 received in evidence.)

Q. What's that?

A. That is the note that I took out.

THE COURT: Mr. Blum, do I understand that you and opposing counsel have agreed upon the admissibility of certain of these documents?

MR. BLUM: Yes, I believe that's correct, and we have used the numbers which were used in the depositions previously.

THE COURT: Are all exhibits so agreed upon, or are there some marked only for identification?

MR. BLUM: I believe there are some marked for identification.

THE COURT: Then you will distinguish between those which you have agreed may be received in evidence and those which are only for identification.

MR. BLUM: I think Mr. Goldstein and I know where our areas of disagreement are.

Q. Once again, does Plaintiff's Exhibit 13 bear your signature?

A. Yes, sir.

Q. Was Mr. Lamula present when that was signed?

A. Yes, sir.

Q What's the date on which it was signed?

A. May 29, 1974.

Q After you signed that note, what did you and Mr. Lamula then do at the bank?

A. Left.

Q. Where did you go?

A. He had a cab, he dropped me at the Capitol, and I don't know where he went.

Q. When did you see Mr. Lamula next after that?

A. The next morning.

Q What were the circumstances of that meeting?

A. He went with me to the bank to have the check certified.

Q What check was that?

A. The one the bank had given me for 99,000. The exact amount you have there.

THE COURT: Am I cor[illegible] they were certifying a bank check?

THE WITNESS: My personal check.

THE COURT: This was not then the check the bank gave you on the loan?

THE WITNESS: The bank put the money in my account.

THE COURT: And you had to draw against it?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q I show you Plaintiff's Exhibit 15 in evidence.

xxx (Plaintiff's Exhibit 15 received in evidence.)

Q I ask you what that is, if it's familiar to you.

A. That is a receipt for the amount of $99,804.45.

Q Who is it from?

A. It's signed by a Minnie Vena.

Q. Who is it from?

A. Secretary and treasurer of John Lamula Investors, Inc.

MR. BLUM: Let's read it so the jury understands it. It says May 30, 1974, received from Mrs. Bernice C. Grupe check in the amount of 99,000 et cetera, et cetera, dated May 30, 1974, certified the Bank of New York, Albany, and then there follows a number. It says received by Minnie Vena, secretary and treasurer, John Lamula Investors Investments, and there follows the address of the organization and the indication that it's addressed to Mrs. Bernice C. Grupe and her address in Williamsville.

Q. Now, why did you give this sum of money to Mr. Lamula?

A. To invest for me.

Q. Was it your understanding at the time you gave it to him that he bought some securities for you?

A. No, sir.

Q. What was your understanding at the time?

A. I thought you had to have money to buy investments.

Q. And so what was your understanding of the reason for giving him the check?

A. So he could buy investments.

Q. At that time did Mr. Lamula give you anything else?

A. Yes, sir.

Q. At the time you gave him the check?

A. Yes, sir.

Q. What did he give you?

A. He gave me the yearly reports of the companies he had invested in, plus a sheet of paper made out in handwriting to show the names, the interest, and when the interest was due. It was handwritten. It was not computer. That was included in the package.

THE COURT: You have got me a bit confused here, Mrs. Grupe.

You say that you didn't understand that he bought anything at that point, and yet he gave you a handwritten list of companies which you say he had invested in.

THE WITNESS: At the same time. That he gave me the yearly reports.

THE COURT: Yes. But at that point, did you understand he had already bought these for your accounts or were these things he was going to buy for your account?

THE WITNESS: Going to buy for my account.

THE COURT: Going to buy?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q. Now, I show you this handwritten sheet with various attachments which has been identified as Plaintiff's Exhibit 20 in evidence.

xxx (Plaintiff's Exhibit 20 received in evidence.)

Q. I ask you if that's the sheet you say you received along with these annual reports.

A. Yes, sir, it is.

Q. I beg your pardon?

A. It is.

Q. Did you examine it when you received it?

A. No, sir.

Q. Was there any time when you did examine it?

A. Probably about two weeks later.

Q. Did Mr. Lamula say anything about it at the time he gave it to you?

A. No. I didn't even know it was in there.

Q. Now, at sometime subsequent --

THE COURT: Mr. Blum, she said she didn't know it was in there, but she didn't say where "there" was.

THE WITNESS: In the packet with the year-end reports, sir.

THE COURT: Was all that contained in a large envelope or folder?

THE WITNESS: Yes, sir. He has the folder.

THE COURT: I see.

Mr. Blum, would you let me see Exhibit 20 while you are working on that?

MR. BLUM: Yes, sir.

(Handed to the Court.)

Q. I show you a brown envelope already marked in evidence as Plaintiff's 19.

xxx (Plaintiff's Exhibit 19 received in evidence.)

Q. Can you identify that envelope?

A. Yes, sir.

Q. What is it?

A. This is the envelope that contained the yearly reports as well as that document the Judge has.

MR. BLUM: May I show that to the jury, your Honor?

THE COURT: Yes.

MR. BLUM: This is Plaintiff's Exhibit 20.

(Exhibit handed to the jury.)

THE COURT: We will have a brief recess of about ten minutes or so, Mr. Blum.

(Recess.)

MR. BLUM: At the moment we had recessed, your Honor, I had asked the jury to examine Plaintiff's 20.

THE COURT: I take it this diagram which you have put up on the board is a blowup of portions of Exhibit 20, or at least an extract from it.

MR. BLUM: Yes, your Honor.

Counsel and I are in agreement it accurately states trade dates of purchase, the names of the corporations whose debentures were involved, and the dollar amount, the face amount of the debentures which were purchased at the different dates.

THE COURT: That would be face amount at maturity?

MR. BLUM: That is the face amount at maturity, and the price per thousand that it sold for at the trade date and the amount that was paid to purchase that.

THE COURT: I will caution the jury that this chart as well as other such charts and drawings are used to help you understand the evidence, they are not evidence themselves. The document you have in front of you, Exhibit 20, is evidence. This is drawn from it, and as you can see, it's a little more legible and bigger than what you have in front of you.

MR. BLUM: There are additional entries on that sheet that I think in time the testimony of various witnesses will distinguish those amounts from the ones which are listed on that placard.

THE COURT: All right. Mr. Blum, I believe all the jurors have seen it.

Q. Now, Mrs. Grupe, I show you this document marked Plaintiff's 14 in evidence, and ask you what that is.

xxx (Plaintiff's Exhibit 14 received in evidence.)

A. That would be the receipt for charging my account for the check to Mr. Lamula.

Q. What is the amount again?

A. 92,000 -- no, wait a minute.

Q. Here it is down below.

A. $99,804.45.

Q. At sometime following that date which you have identified for us as May 30, the day you gave him the check, did you receive any information relative to the purchase of securities?

A. Yes, sir.

Q. I show you Plaintiff's 12 already marked and ask you if you can identify that document.

THE COURT: Is this in evidence?

MR. BLUM: Yes, your Honor.

A. Yes, sir.

Q. What is that?

A. That is a record of what he has purchased for me, and also --

Q. Can you speak up a little louder?

A. I am sorry.

It's a record of what has been purchased for me, and there is also an additional purchase here. Isn't there? Isn't that the additional purchase?

Q. You have to look at it.

A. I am sorry.

There is an additional purchase on here.

Q. Where is that?

A. 5/22/74, 5/30/74.

Q. What is the amount shown as the value of the securities bought there, the price paid for the securities bought?

A. $3,104.45.

Q. That's on which side?

A. The right-hand side.

Q. Read the right-hand side. What does it say?

A. "Interest charged you."

Q. What does it say on the left-hand side?

A. It's a list of things I already owned.

"We have adjusted all bills on our records to the address below."

Q. Read on down. What follows at that point?

A. At that point --

Q. What follows? What's listed on the right-hand side?

A. All of my investments.

Q. And what's the amount shown as the total of those investments?

A. $99,804.45.

Q. That's the same amount as the check, isn't it?

A. Yes, sir.

Q. At some subsequent time, did you receive a card from Mr. Lamula's office?

A. Yes, sir.

Q. I show you this document already marked in evidence as Plaintiff's Exhibit 1.

xxx (Plaintiff's Exhibit 1 received in evidence.)

Q. I ask if you can identify it, and tell the jury, please, what it is.

A. Yes, sir. It's a card I received from

Mr. Lanula's office, an account number?

Q. And I show you a memorandum on a slip of paper marked Plaintiff's 26.

xxx (Plaintiff's Exhibit 26 received in evidence.)

Q. I ask if you can identify that, please.

A. Yes, sir.

Q. What is that?

A. It's a note saying they are enclosing an office card to be signed and completed and it is okay to return it when you see John in Albany next week.

Q. Read it from beginning to end, please.

A. "Dear Bernice, I am enclosing an office record card to be signed and completed and it is okay to return when you see John in Albany next week. Hope all is well with you, regards to Dorothy. Also thought you would like to see the attached ads."

Signed Minnie Vena.

Q. Do you know what the attached ads were, or do you recall?

A. Yes, I do.

Q. What were they?

A. I don't recall what they were. In substance, they were just advertisements for additional investments.

THE COURT: There has been no testimony so far as to Minnie Vena other than the fact that she signed some document as secretary and treasurer.

MR. BLUM: So far as I am aware, your Honor, the witness has never met or seen Minnie Vena.

THE COURT: I think it is worth asking her that.

MR. BLUM: Let me ask that question then.

Q. Have you at any time met Minnie Vena?

A. No, sir.

Q. Has there been any occasion when you have spoken on the telephone to someone who identified herself as Minnie Vena?

A. Yes, sir.

Q. How often did that occur, to the best of your recollection?

A. To the best of my recollection, it could have been nine or ten times.

Q. When were those nine and ten times, what year and what period of the year?

A. It would have been immediately preceding the investments and also afterwards.

Q. Is it correct to state that it was entirely in 1974?

A. Yes, sir.

Q. And between May and August?

A. Yes, sir.

Q. At the time that you received this notice and just before you gave this check to Mr. Lamula, what money did you have in banks, if any? What was there? You had the certificate of deposit for $100,000. Did you have any other money?

A. I had approximately $20,000, eleven of which I gave my son, so that would have left me about $9,000.

Q. There is one thing that perplexes me. You told me at least before your second marriage you worked at various employments at $13,000 and there were various salaries in the 1950's, and the early part of the sixties, and you received some other compensation.

Did you have any savings from those days?

A. No, sir.

Q. What did you do with the money that you earned?

A. Educated three sons.

Q. What do you mean you educated them?

A. I sent three boys to college and paid for every single thing.

THE COURT: Did one of them also go on to law school?

THE WITNESS: Yes, sir.

THE COURT: Who paid for that?

THE WITNESS: I paid for half of it, and my second husband helped with $2,000, and he borrowed some from the Government.

Q At sometime subsequent to giving the check to Mr. Lamula, did you receive this document which is already in evidence as Plaintiff's 18-A?

A. Yes, sir.

Q. What is that?

A. This is a statement of what I own, the interest, dates, the total amount which I should expect, and the yearly income of $10,762.50.

Q At the time that you received these notices, had you seen or received any debentures or bonds or other pieces of paper?

A. No, sir.

Q When you received those annual reports which you say was on May 29, what did you do with them?

A. Put them in a drawer.

Q. Was there any time subsequent to that that you took a look at them?

A. Yes, about two weeks later we weren't busy in the office and I thought it was a good chance to examine them.

Q Let's take a group of documents here which are labeled Plaintiff's 2 through 12, I think, already in evidence.

xxx (Plaintiff's Exhibits 2 through 11 received in evidence.)

Q I ask you if you saw these documents before. I believe they are 2 through 11. And if so, when you saw them.

A. I remember seeing them, sir. I can't remember the exact date.

Q Approximately when?

A. It would have been after May 30.

Q Was it a day, a week, ten days or so? Give us some time frame.

A. To the best of my recollection, it would have been three weeks.

Q What did you understand --

MR. GOLDSTEIN: Excuse me, your Honor. Two or three weeks in reference to what?

MR. BLUM: I am sorry.

Q Two or three weeks after what?

A. After May 29. I am sorry.

Q Mrs. Grupe, where were you at the time -- withdrawn.

You were in Albany at the time you gave this money to Mr. Lamula, weren't you?

A. Yes, sir.

Q. The session employment -- the session was still in progress, wasn't it?

A. Yes, sir.

Q. And you were still working there, is that correct?

A. Yes, sir.

Q. What did you understand these exhibits to be when you saw them?

A. Well, I understood them to be the investments that I purchased.

Q. They were notices of the investments, weren't they?

A. Yes.

Q. And where are they addressed?

A. 225 Irving Street, Lockport, New York, my son's address.

Q. Did you get these from your son or did you pick them up when you were out in Lockport?

A. As I recall it, I picked them up at my son's house when I went to see him.

Q When was that? Well, you have answered that, I think, two or three weeks later?

A. Yes.

Q Let's take one or two of these. The first one of these says -- refers in description to Allegheny Beverage Corp.

At the time you received it, did you know what the business of Allegheny Beverage Corp. was?

A. No, sir.

Q And the second refers to D.W.C. Corp. That is Plaintiff's 3.

Did you know then what D.W.G. Corp. did?

A. No, sir.

Q Plaintiff's Exhibit 4 refers to Applied Data Research.

Did you know what that did at that time?

A. No, sir.

Q Is the same true with regard to Arwood Corp., which is Plaintiff's 5?

A. Yes.

Q Inflight Services, did you know what that was when you got it?

A. I figured that one out. That it had to do with pictures on airplanes.

Q. Now, Plaintiff's 7, Knight Industries, did you know what that was?

A. No, sir.

Q. And Plaintiff's 8, Lincoln Mortgage Investors, was that familiar to you then?

A. No, sir.

Q. Plaintiff's 9, Nortek, Inc., was that familiar to you?

A. No, sir.

Q. Plaintiff's 10, Technical Operations, was that a familiar name when you got this?

A. No, sir.

Q. And Monroe Group, which is Plaintiff's 11, was that a familiar name to you?

A. No, sir.

Q. With Plaintiff's Exhibit 2 before you, let's go across this slip. Let's see if we can understand some things.

On the left of it there is a box.

Withdrawn.

MR. BLUM: Your Honor, if I may, I would like to hand 3 through 11 to the jurors.

THE COURT: Why don't you hand one to each of the jurors, since they are all the same except for the name.

MR. BLUM: Yes, sir.

THE COURT: Can we stipulate that Exhibits 2 through 12 are forms all of which are headed John Lamula Investors, Inc., and that the printed portion of each one is identical?

MR. BLUM: Yes.

MR. GOLDSTEIN: Yes.

THE COURT: The difference in each one is the entry with respect to description of the security involved, its price, amount, interest, and so on.

Correct?

MR. BLUM: Yes.

MR. GOLDSTEIN: Yes, that's right.

THE COURT: Are all the trade dates and settlement dates the same or do they vary?

MR. BLUM: On all of this group they are the same, all 5/22/74 and 5/30/74.

THE COURT: All right.

Q. When you received this and it said under -- well, did you read it when you got it?

A. No, sir.

Q. You didn't look at it at all?

A. No, sir.

Q. Was there a time subsequent to the date on which you got it that you looked at it?

A. If there was, it wasn't with understanding.

Q. Where it says in the left, quantity, on that one that you have it says 30M.

What do you understand that to mean?

A. Now?

Q. Now, then --

MR. GOLDSTEIN: I would object to what her understanding now is.

THE COURT: Yes.

What did you believe 30M meant at that time or did you have any understanding?

THE WITNESS: Sir, I don't think I did.

THE COURT: Are you aware that M is the Latin number for thousand?

THE WITNESS: Yes, but I never thought of it before.

THE COURT: I said Latin. I should have said Roman, Roman number for a thousand.

THE WITNESS: I didn't think of it before, sir. That's the first time I've had that.

THE COURT: All right.

Q. Now, looking at the next box on the one that you have it says "Allegheny Beverage."

Withdrawn.

MR. BLUM: Your Honor, on the objection which Mr. Goldstein raised, may I approach the bench with Mr. Goldstein?

THE COURT: All right.

(At the bench.)

MR. BLUM: I can do it in a fashion I have been going but it seems to me at the very least it's admissible and relevant on the state of her sophistication on a simple point. If her sophistication --

THE COURT: We didn't stop you from going into what she knew at thattime. You are going into what she knew now and that is immaterial. I take it it's uncontested since all this occurred she's learned a lot about this.

MR. BLUM: Very little.

THE COURT: If she hasn't, that is her deficiency, I don't think it is a matter of proof.

MR. BLUM: Then I will do it as to what understanding she had at the point.

THE COURT: Yes, I would stay with it. That's what is evidentiary here.

MR. BLUM: All right.

(In open court.)

Q In the next box where it says "Description," at that time -- and we are referring to June of 1974, there appears some numbers and a slash and some other numbers. On the Allegheny Beverage Corp. it says 6 1/4 and then there is a slanted line and it says 88.

At that time, what meaning had that to you?

A. I have to be completely honest. I didn't examine it that closely, but 6 1/4 I would assume -- well, you don't want me to assume. 6 1/4 would be the interest.

Q. All right.

Now, where it says "Price" 59, did you have any understanding at that time as to the price that you were paying for Allegheny Beverage Corp.?

A. $59 for each bond or whatever I was paying.

Q A little further along there is a box that says "Amount" and then/there appears a dollar sum.

What understanding had you as to where it said amount? You at least saw that at the time, didn't you?

A. That's what I paid for it.

Q. Now, there is a number marked interest in a box marked "Interest."

Did that at the time have any meaning for you?

A. Probably. That I was going to get $625 interest on that investment.

THE COURT: You understood that to be the interest you would receive rather than the interest which had already accrued on it?

THE WITNESS: Yes, sir.

Q Now, a little bit further on, on the right, there is a space where it says "Code Number." And there is a digit 2.

Did you notice that at the time?

THE COURT: Can we stipulate that the same code number appears on each of these documents?

MR. BLUM: Yes, your Honor.

MR. GOLDSTEIN: Yes, your Honor.

THE COURT: All right.

Q A little bit further down it says "Code Number," and there appears to be inserted the digit 2.

Did you see that at that time?

A. If I did, I didn't pay any attention to it. I was not aware of it.

Q Is the testimony you have given with regard to Plaintiff's 2, and the state of your knowledge with regard to the things that appear on those various boxes that we have talked about there, and places we have talked about, was that also true to the extent that you examined the others -- that is to say, that your knowledge was what it was as to the meaning of those things?

A. I am afraid I don't understand your question.

THE COURT: I don't understand it either, Mr. Blum.

MR. BLUM: Then I am afraid I will have to --

THE COURT: Are you asking whether if asked the same questions about each of these, she would give the same answer as to each of the ten involved?

MR. BLUM: Yes.

THE COURT: Your answer is the same as to all ten, you had no different understanding?

THE WITNESS: That's right.

Q. Were there any of these you examined more closely than others?

A. No, sir.

Q. Were there any where your knowledge was different other than what you have just testified to?

A. No, sir.

THE COURT: Do all of them also contain her address in Irving Street, Lockport, New York?

MR. BLUM: I think we can stipulate to that.

MR. GOLDSTEIN: Yes, your Honor.

Q. After this occurred, when next did you hear from or see Mr. Lamula?

A. To the best of my recollection, it would be at the Senate dinner.

Q. When was that?

A. I believe it was June 13. I could be wrong on the date but I think it was in the middle of June.

Q. Where did that take place?

A. New York City at the Hilton.

Q. That's where you saw him.

Did you speak to him between May 30 and June 13?

A. I might have talked to him on the phone. I didn't see him that I recall.

Q. I show you Plaintiff's Exhibit 22 already in evidence.--

xxx (Plaintiff's Exhibit 22 received in evidence.)

Q. -- which is really three documents fastened together.

I ask you if you recall having received that.

A. Yes, sir.

Q. When did you receive it?

A. It would have been in the early part of June.

Q. What did you understand it to be, those documents to be, when you received them?

A Additional purchases Mr. Lamula had made for me.

Q Had you spoken to Mr. Lamula about any additional purchases between May 29 or May 30 and the date you received Plaintiff's 22?

A No, sir.

THE COURT: Are they all dated the same date or are they dated different dates?

MR. BLUM: Exhibit 22 is a different date.

THE COURT: But are all three pages the same date?

THE WITNESS: I think --

MR. BLUM: No, your Honor, as you will see in just a moment.

Rather than passing it around, in the interest of saving time I will read what the three sheets say.

The first one is headed Statement, John Lamula Investors. It's addressed to Mrs. Bernice C. Grupe at 351 Evans Street A, Williamsville, New York, and the Zip Code. On the left-hand side it says shares 5M, description Technical Operations, 885, and amount $4,136.67.

On the right it says interest charged you, $286.67. And below that appear the words "Note, interest to be deducted by your accountant when filing 1974 return."

Attached to that is a sheet which appears to be a copy of the interest income sheet to which there is an additional item which says, "5,000 Technical Operations 885," and shows various amounts indicating an increase in the yearly income.

The bottom sheet appears to be a copy of Plaintiff's Exhibit 20, which you have all seen, which contains some insertions in the box that said Technical Ops.

There is written in, in ink, on this duplication copy an additional amount of 5M and total of 20M and over to the right there appear additional numbers in various columns, and down at the bottom there appear additional numbers added.

Q. What did you do when you received that Plaintiff's Exhibit 22?

A. I cried.

Q. What was the reason for that?

A. I couldn't understand it. I went up to Miss Emerson's room and asked her if she could explain it to me.

Q. What did she say?

MR. GOLDSTEIN: Objection.

MR. BLUM: Your Honor, Miss Emerson has been deposed, she is aged, ill, and absent. I am told she cannot be here, although we listed her on our witness list and we intend to do a read-in of her deposition and I believe my opponent has the deposition available also and intends to so as much.

THE COURT: The deposition then will tell us what she said if this discussion is in there.

MR. BLUM: I believe my opponent intends to produce her on his side of the case.

THE COURT: Her or her deposition?

MR. BLUM: Her.

THE COURT: You have lost me.

MR. BLUM: I cannot subpoena her. I am prepared to read in her testimony. My opponent advises me because of her age and ailment, she will be unable to stay for any length of time and I think he has arranged to bring her down next week.

MR. GOLDSTEIN: At this time we do not know if she will appear. She definitely will not be here for plaintiff's case, but we do not know yet if she will even appear for ours.

MR. BLUM: Under the circumstances then, your Honor, is it not appropriate in view of the fact she has been deposed under these circumstances and her testimony will be here for the usual read-in and may herself be here?

THE COURT: If you establish the unavailability of a witness, you may put the deposition in. However what we are discussing now is the use of hearsay, which is a different proposition.

What hearsay exception are you relying upon?

MR. BLUM: Your Honor, my understanding -- may I approach the bench with regard to this?

THE COURT: Yes.

(At the bench.)

MR. BLUM: First of all, your Honor, I believe that the unavailable witness rule --

THE COURT: We are talking about use of hearsay.

MR. BLUM: As I understand the testimony which takes place between the two of them, which is not offered for the truth of what was said, but to show her state of mind, intention or reaction, is an appropriate offering.

THE COURT: Why is her state of mind in June of any consequence?

MR. BLUM: Because her state of mind, her age, has been put in issue, her sophistication has been put in issue.

THE COURT: But the purchases are made. It's all over with at this point.

MR. BLUM: They weren't all made. There were two other transactions which took place.

THE COURT: Make an offer of proof. What would she testify to if allowed to testify on the subject?

MR. BLUM: She would testify she told the lady she was terribly upset and didn't understand --

THE COURT: You have that in already. You are asking her what Miss Emerson said to her. What would she testify to if allowed to?

MR. BLUM: Miss Emerson, as I would understand it, would say what are you worrying about, John is doing a good job for you.

THE COURT: That couldn't be of less consequence. I will sustain the objection until such time as you can point out a particular section of the rules of evidence which makes it admissible.

MR. BLUM: 804-B-1 of the Federal Rules of Evidence provides the following are not excluded by the hearsay rule if the declarant is unavailable as a witness. I know that authorizes me to offer her deposition.

THE COURT: This kind of hearsay statement is not former testimony.

You come back to this later on if you find a section that applies, but in the meantime I am sustaining the objection.

(In open court.)

Q. Why did you go to see Miss Emerson, Mrs. Grupe?

A. Because I thought she could give me some explanation why Mr. Lamula had bought something for me without consulting me.

Q. After that discussion, did you receive Plaintiff's 21, already marked in evidence?

xxx (Plaintiff's Exhibit 21 received in evidence.)

A. Yes, sir.

Q. And that's another brokerage advice, isn't it, that refers to the purchase of the 5,000 additional bonds or debentures of Technical Operations, isn't that right?

A. Yes, sir.

Q. Did you examine that one when you got it?

A. To the amount I definitely did.

Q. And you had received Plaintiff's 22, which the jury is now examining, which says, "Statement."

I show you Plaintiff's 24 and ask you what that is.

A. That's a canceled check of the amount for the Technical Operations that I sent to Mr. Lamula.

THE COURT: For the what?

THE WITNESS: Technical Operations that I sent --

THE COURT: Technical Operations.

This is the additional 5,000 shares, June 3, in the amount of $3,850, about which you have just testified?

THE WITNESS: Yes, sir. I sent him the amount.

Is that the right amount? There are two checks.

MR. GOLDSTEIN: Your Honor, if it will clarify things, I will stipulate that 24 is the payment for the Tech Op. 5,000 shares.

Q. It is your check to John Lamula Investors, isn't it, in the amount of $4,136.67?

A. Yes, sir.

THE COURT: Is that because there was interest in addition to the cost?

MR. BLUM: That is because -- well, how the amount was arrived at or why she wrote a check in that amount, your Honor.

THE COURT: Let me see Exhibit 21.

(Exhibit handed to the Court.)

MR. BLUM: There is a point to be made on this, your Honor.

Q. I point before you again, Mrs. Grupe, Plaintiff's Exhibit 22.

Was it that which guided you when you wrote the check or was it Plaintiff's Exhibit 21, which was addressed to Williamsville?

A. As I remember, to the best of my recollection, it would have been this one.

Q. Which one are you indicating?

A. 21. Is this 21?

Q. Look at the tag.

A. I am sorry. 22.

Q. Did you have any discussion with Mr. Lamula after you received Plaintiff's 22 and before you saw him at the State dinner on June 13?

A. I don't think I did, sir. Mr. Lamula was very unavailable to phone calls. I perhaps called him, but I didn't get him.

Q. Did you try to reach him during that period of time?

A. As I remember, yes.

Q. When you saw him on June 13, were you alone with him?

A. No, sir.

Q. Who else was present?

A. There were about 2,000 at the dinner, but there were about twenty-five in our hotel room.

Q. When you say "our hotel room," whose hotel room are you talking about?

A. Miss Emerson and I shared a room.

Q. Was Mr. Lamula there, too?

A. Briefly.

Q. Was there any discussion with him at that time with regard to any of these financial matters?

A. Not that I recall. It was a social evening.

Q. When did the legislative session end, if you recall?

A. Well, there were some of us who were kept on for thirty days after the session ended, so the session must have -- I was kept on for thirty days, so I'd say I was there to approximately June 20, or someplace around there. I can't give the exact date.

Q. Did you see Mr. Lamula between June 13 and June 24?

A. No, sir.

Q. On June 24, you left for Rome with Miss Emerson and some others in a group, didn't you?

A. Yes, sir.

Q. Now, why did you send that check for $4,136.67 to Mr. Lamula if that was a purchase that you didn't ask him to make or he didn't tell you he was going to make?

A. Mr. Lamula had convinced me that he was a very competent investment adviser and I just took him at his word. I wonder now.

Q. I show you an exhibit previously marked as Plaintiff's 29-A. It's a copy of a letter.

Can you identify the handwriting?

A. Yes, sir. That's my handwriting.

Q. To whom is that letter addressed?

A. John. Mr. Lamula.

Q. You wrote that letter?

A. Yes, sir.

Q. Do you recall approximately when you wrote it?

A. To the best of my recollection that would have been the day or two before I left for Rome.

Q. What day of the week was it you left for Rome? It was June 24, wasn't it?

A. I guess it was. I am trying to remember.

Q. Let's see if we can identify it. June 24 was a Monday, wasn't it?

A. Yes, sir.

Q. What does it say on that letter?

A. Monday morning.

Q. Was it written the day you left for Rome?

A. Probably.

Q. Let's look further down.

Why don't you read the letter aloud to the jury?

A. "I found the enclosed when I arrived back home yesterday. I have signed it but will ask you to mail it if it's accurate. It was great seeing you the other night."

This would be a reference, I believe, to the Senate dinner.

"But much too short. Sorry you weren't in when I called Friday morning but I realize how busy you are. We leave for Rome Monday, the 24th, the bus leaves Albany at 3:30 p.m. I guess we have dinner at Kennedy. I know we have a three-hour time there. I called Al this morning. Everything is fine. I imagine working for him will be some experience. He didn't know the thirty-day bill period was over. I'll call you from Kennedy. Arivederci, Bea."

Q. What is the reference to Al that is made in that letter?

A. That is Assemblyman Albert Hausbeck.

Q. Why was he referred to by you in that letter?

A. He had asked me to run his office for him in the Assembly the following Legislature session.

Q. And did you, in fact, go to work for him the following Legislature session?

A. He wasn't re-elected.

Q. Following your writing that letter to Mr. Lamula that you just referred to, Plaintiff's 29-A, there came a time, didn't there, when you actually went to Rome?

A. Yes.

Q. And Dorothy Emerson was one of your companions on that trip, wasn't she?

A. Yes, sir.

Q. Who else was along on that trip whom you had known beforehand?

A. My niece, Marie Bogans.

Q. Who else?

A. Casually I knew Irene Frangello, but not well.

Q. What was the circumstance? Why did the four of you happen to be going off to Rome together?

A. We worked together and my niece was going just because I could take her, and Miss Frangello and Miss Emerson were good friends.

Q. Were there others in this group or just the four of you?

A. Yes, but none I knew well.

Q. What was it, a tour?

A. Yes, sir.

Q. How long a trip was it?

A. Eight days.

Q. While you were in New York before departing, did you speak to Mr. Lamula?

A. No, sir.

Q. Did you try to reach him?

A. Yes, sir.

Q. While you were in Rome, did you write to him?

A. No, sir.

Q. When did you return?

A. If my arithmetic serves me, it would be July 2.

Q. During that period from the time you wrote Mr. Lamula on June 17 and the date of your return from Rome, which includes apparently the week before you left and the time you were away, did you have any communication at all, did you write any letters or receive any letters to or from Mr. Lamula about investments?

A. No, sir.

Q. You didn't speak to him about investments?

A. No, sir.

Q. Nor he to you?

A. No, sir.

Q. Now, on your return where did you go?

A. To Albany.

Q. And how long were you in Albany?

A. Overnight and the following two nights and one day.

Q. Then what did you do?

A. Went back to Williamsville.

Q. And did you find anything there from Mr. Lamula when you got back?

A. Yes.

Q. What did you find?

A. The bonds.

Q. Was anyone at the airport whom you knew apart from those going on this trip?

A. Yes, sir.

Q. Who?

A. My nephew, William Morris.

Q. Did you have any discussion with William Morris at the airport?

A. Yes, sir.

Q. Did you have any discussion with Mr. Morris with regard to your investments?

A. Yes, sir.

Q. Now, on your return you say you found something from Mr. Lamula.

What was it you found?

A. The bonds.

Q. I show you Plaintiff's Exhibit 30-A already in evidence.

xxx (Plaintiff's Exhibit 30-A received in evidence.)

Q. I ask if that also is a letter which you wrote?

A. Yes.

Q. Would you read that, please, to the jury.

A. "Dear John. I have received the bonds today and will put them in a safety deposit box. I have so much to ask you. Do I have to go to Albany to get my interest and pay off the loan?" That's a reference to the certificate of deposit. "Would you rather I talk to Paul Leyden, who is a vice president of the bank there?

"Should I invest this interest coming due? What's the procedure if you decide to sell these bonds to invest in something else? Remember how simple your life was before you met me. I have so much to learn about investments. Sorry you weren't home when I called from the airport. Rome was beautiful to describe. I was never anyplace I loved more. There were side trips but I only included Florence. No one could get me out of Rome.

"By the way, I brought you a small part of Italy from Florence. I got so excited when I wished on the fountain, I threw in my coins and I forgot the wish. Had to do it all over again. Cost me 6 cents instead of three.

"How can I tell you of the beauty, the music, the traffic, the warmth of those lovely people? Have you been there? Dorothy made out well but, of course, I was glad to be there. It wasn't as easy for her as she pretended. Irene is something else. Dorothy and I nicknamed her Lazy Daisy. We either couldn't find her or."

That's the end.

Q. I think there is another page.

A. I am sorry.

"Or were falling over her. Irene Frangello, I mean. We had millions of laughs and just loved it. I wasn't even afraid coming home on the plane, a first for me. I fly constantly but usually die a thousand deaths.

"I haven't talked to Al Hausbeck. I just got home yesterday. I'll call him Monday to see if anything has developed. Don't work too hard. My love, Bea."

Q. Then attached to that are some pieces of paper.

What are those pieces of paper?

A. The first one is a piece of paper I got from

International Royalty, the $500 I had invested in the oil company which I sent to Mr. Lamula to see if I should hold on to it or what I should do with it.

Q. What are the other sheets attached?

A. They must have come with it.

Q. Is there some writing of yours on the letter from International Royalty?

A. Yes.

Q. What does it say?

A. "For your interest. Do you have the stock in the envelope I gave you?"

The rest of it I can't read. As far as I know, it's Mr. Lamula's writing.

Q. At the top of the first page it says RECD, 7-8-74 and there is an N.

Is that writing familiar to you?

A. Not from there.

Q. I am sorry.

(Handing to the witness.)

A. I can only be assuming. I can't tell you whose it is.

Q. Up until this point, which is right after your return to Williamsville, had you discussed your investments with anyone other than Mr. Lamula, Miss Emerson, and the time you mentioned to Will Morris at the airport?

A. I mentioned to my son, the attorney, that I had made some investments in a telephone conversation.

Q. Was there anybody else that you mentioned this to?

A. Would you please give me a reference of time?

Q. All right. We are talking about from May 29, 1974 until July 8, 1974.

Was there anybody -- I will make it more specific -- was there anybody to whom you told the names of the securities that had been bought for you?

A. No, sir.

Q. What did you do in the month of July? Where were you? 1974.

Let me withdraw the question and rephrase it.

The session was over then, wasn't it?

A. Yes.

Q. And you returned to your home in Williamsville?

A. Yes, sir.

Q. A suburb of Buffalo?

A. Yes, sir.

Q. And during that period of time, was there anybody else that you -- after July 8 and before July 29, let's say, was there anybody to whom you told or identified the debentures that had been bought for you?

A. Yes, sir.

Q. Who was that?

A. My brother-in-law and my sister.

Q. When did that happen?

A. Well, they were at my home for dinner one evening and I made the remark of how thrilled I was that I now had 107 -- $170,000.

Q. And what else took place and what else did you do at that time?

A. My brother-in-law asked me the names of some of the stocks that I owned.

MR. GOLDSTEIN: Your Honor, I would object to any conversation between Mr. Morris and the plaintiff, particularly as to what Mr. Morris may have said or anything regarding the conversation.

MR. BLUM: May I ask the basis of the objection?

THE COURT: I assume it's hearsay.

MR. GOLDSTEIN: Yes.

MR. BLUM: In an earlier discussion, your Honor mentioned that question might be necessary for us to discuss later and you asked we address ourselves to it. I have prepared a memorandum in the interval which I should like to offer to the Court in support of our contention.

THE COURT: Give your adversary a copy.

MR. BLUM: I have just now. It was delivered here within the past forty-five minutes. Which addresses to the subject matter of our contention which is, that under the circumstances of this case, this is not hearsay.

THE COURT: This is fairly lengthy. I can't stop and read it now. Slide around this point, go to something else. I will read it tonight and we will come back to this tomorrow.

MR. BLUM: All right.

Q. Did you give a list of the securities which had been bought for you to your sister and brother-in-law?

A. Yes, sir.

Q. Was there any other occasion in the month of July when you had discussions with your sister or brother-in-law with regard to those securities?

A. Yes, sir.

Q. In the interval, did you receive Plaintiff's Exhibit 33 in evidence?

A. Yes, sir.

Q. What is that?

A. That's a purchase of 10M -- is that 10,000 -- Elco Corporation stock, the amount $4500.

Do you want anything more?

Q. Well, it's a confirmation from John Lamula Investors, is it not, and it reflects a purchase in your account in the total amount of $4752.50, is that right?

A. Yes, sir.

Q. Did you have any discussion with Mr. Lamula about this subject before you received this piece of paper?

A. No, sir.

THE COURT: Mr. Blum, you better give us the date on that.

MR. BLUM: I am sorry. It shows a trade date of July 10, 1974 and a settlement date of July 17, 1974.

Q. Now, had you had any correspondence with Mr. Lamula on the subject of purchases of Elco Corp. or any other purchases between the time you returned home from Rome and the time you received this piece of paper?

A. No, sir.

Q. What did you do when you got it?

A. I tried to ignore it.

Q. And what happened, if anything?

A. Minnie Vena called me everyday and asked me for the money, and finally on Friday I sent it after talking to Mr. Lamula on the telephone and he told me it was something that I needed.

Q. What was the conversation that you had with Mr. Lamula?

A. That, and to the extent that I wanted nothing more bought in my name.

THE COURT: What was the date of this discussion?

THE WITNESS: That would be the Friday of the date that I received it.

MR. BLUM: I don't know the exact date, your Honor.

Q. The middle of July, is that correct?

A. (No response.)

Q. Let's see if we can't identify it. I show you Plaintiff's Exhibit 35, already in evidence.

XXX (Plaintiff's Exhibit 35 received in evidence.)

Q. I ask you what that is.

A. That is a check I wrote dated July 16, but I don't believe as I recall that I sent it. I didn't intend to send it. But after talking to Mr. Lamula, so I think it was sent probably two or three days after that, to the best of my recollection.

Q. Did your telephone conversation then take place around the date of July 16 or a day or two afterward?

A. Yes, sir.

Q. And that check is in the amount of $4752.50?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit 34, already in evidence, and ask you if you can identify that.

What is it?

A. That's my writing. I don't know what it is.

Q. Will you read that? Was that letter written in July of 1974?

A. Yes.

Q. Would you read it, please, to the jury.

A. "Dear John. I am enclosing the signed form. Golly, honey, my savings is getting pretty low. I am a bit concerned. However, I know you know what you are doing, but remember, please, I need to live a bit now. Not interested too much in leaving an estate. I am sorry you didn't call as you said you would. I do hope nothing is wrong. I do understand how busy you are, but I couldn't help but be worried. Are you all right?

"Didn't have to go to Albany, just as you said. However, in talking to Paul Leyden I'm surprised the bank has done nothing about replacing my lost checks. It didn't sound like they intend to, either. I have made arrangements as you suggested to transfer my checking and savings account up here but believe I should wait until I get those canceled checks they lost. Is there any pressure I can put on them?"

They lost three months of my canceled checks.

"Haven't heard from Al. I understand the Governor is dragging his feet in making his appointments and so Perry (Perry Duryea) can't do anything until he does.

"I'll check with Al first, but if nothing is going on, I think I'll make plans to visit my son and his wife in New Jersey soon. They have been after me but it just seems good to be home, it's relaxing here. Dorothy, Billy, Shirley and the children seem to enjoy being here. They really saw the Falls, and we all had some wonderful times.

"Good night, dear. Please don't work too hard. Hope to see you sometime soon. My best love, Bea.

"Over: Will have to transfer funds from my savings account for the last purchase. As soon as this is accomplished, I'll send you the check airmail special."

And the copy of the envelope.

Q. What's the date on the envelope, the canceled date?

A. July 18.

Q. Now, I show you Plaintiff's 31, already in evidence, and ask you if that is a copy of a letter you received.

A. I have no immediate recollection, but I probably did.

Q. Is the signature familiar to you?

A. Yes, sir.

Q. Whose signature is it?

A. John Lamula.

MR. BLUM: Any question on the authenticity of that letter?

THE COURT: What number is that?

MR. BLUM: 31, your Honor.

xxx (Plaintiff's Exhibit 31 received in evidence.

MR. GOLDSTEIN: There is no question on authenticity.

MR. BLUM: I would like to read then this letter. July 8, 1974. It's on the letterhead of John Lamula Investors, Inc., addressed to Mrs. Bernice C. Grupe, 351 Evans Street, and so forth.

"Dear Bea. Was delighted to hear from you and Dorothy. The details of the trip sound fantastic. I expect a complete outline in detail when I see you. In the interim, please mark your records to indicate that you are due to receive a check on July 15 for 20,000 D.W.G. debentures in the amount of $550. Signed John" and then there is a secretary's initials and a P.S. which says, "Received your note with enclosure re the International. Suggest you hold the same. Investment you have nominal."

Dated July 8, 1974.

Q. Now, during this period of time that certificate of deposit came due, didn't it?

A. Yes, sir.

Q Now, I show you Plaintiff's Exhibit 37, already in evidence, and ask you if that's a letter you received from the Bank of New York.

xxx (Plaintiff's Exhibit 37 received in evidence.)

A. Yes, sir.

Q. Would you read that to the jury, please?

A. "Dear Mrs. Grupe. On the 15th we paid your demand note with the proceeds of the C.D. and the net result is as follows: Total interest on the C.D. was $3,826.39. From that we deducted $1,117.81 as interest on the loan and have credited your checking account with the difference of $2,708.58. Enclosed is the paid note and a duplicate deposit slip. Best regards, Paul Leyden, Vice President."

Q. In connection with the payment of the amount for that purchase of Elco, did you have recourse to your savings account? Where did you get the money to pay $4700 for the Elco?

A. From my savings account.

Q. I show you Plaintiff's 36, already in evidence.

Does that reflect that transaction?

A. Yes, sir.

xxx (Plaintiff's Exhibit 36 received in evidence.)

Q. Did there come a time after you paid for the Elco that you had discussion with your sister or your brother-in-law with respect to these debentures which had been bought for you?

A. Yes, sir.

Q. Was that in July?

A. Yes, sir.

Q. Where did it take place?

A. The first discussion was at my home. The second was at their home.

Q. Who initiated the discussions?

A. My sister.

Q. And who initiated the second of the discussions?

A. My brother-in-law the first one, my sister the second one.

Q. After this first discussion with your sister, was there anything that you and your sister did?

A. Yes, sir.

Q. What did you do?

A. We went down to the Buffalo Public Library and looked up some of these debentures -- bonds, to see how they were -- my sister brought up the word rating, something I had --

MR. GOLDSTEIN: Objection.

MR. BLUM: That addresses itself to the point.

THE COURT: I have read your memo and you have it turned around backwards. Your memo was dealing with what the plaintiff herself may have said, and what she may have said on various occasions is not hearsay. It's only what she heard somebody else say that is hearsay.

MR. BLUM: I agree, but the series of transactions which occurred are very important to the establishing of the motive with which she was moved when she disposed of these securities.

THE COURT: She had a discussion. It concerns the bonds. She has a discussion with her sister and brother-in-law and then she goes to the library.

Why must we have what they told her before she went to the library? What does that add to it?

MR. BLUM: What she says, however, I think your Honor concedes is not hearsay.

THE COURT: Obviously not. And that is also evidentiary of her state of mind. What they said to her is evidentiary of their state of mind.

MR. BLUM: What she heard from them could show the motivation with which she was moved when she disposed of the securities and we didn't put that in issue, they did.

THE COURT: It could, and if it becomes crucial it may be necessary, but it is not at the moment. She has a discussion with her sister and brother-in-law, as a result of which she goes to the Buffalo Public Library to look up certain investment guides.

Which ones did you look at?

THE WITNESS: Moody's and Standard and Poor's. My sister went with me.

THE COURT: All right.

What did you find when you looked in Moody and Standard and Poor's?

THE WITNESS: Well, I found one thing that upset me just terribly and that was that Allegheny Beverage, which I had so much of, was in trouble with the SEC.

I also found out that the ratings of the bonds that I had owned were so low. Some were marked speculative. I did -- I couldn't find anything that showed I had anything of value. I didn't look them all up. I looked up just enough to get scared.

Q. Now, I show you --

THE COURT: How much longer do you expect to be on direct?

MR. BLUM: I would say about forty-five minutes for this witness, your Honor.

THE COURT: I have a sentencing this evening, so as soon as you reach an appropriate stopping point, we will stop for the night and excuse the jury and I will go on to my criminal matter.

MR. BLUM: I think this is as good a point to stop as any.

THE COURT: I don't think the jury minds leaving a little earlier.

MR. BLUM: I am wound up and can keep going but I am sympathetic with their problem.

THE COURT: I will excuse the jury at this time.

Let me see counsel at the bench, however.

The jury will be back before 10:00 tomorrow, and do not discuss the case with anyone.

(Jury excused.)

(Discussion at the bench off the record.)

(An adjournment was taken to Thursday, October 28, 1976, at 10 a.m.)

BERNICE C. GRUPE

vs.

75 Civ. 2083

JOHN LAMULA INVESTORS, INC. and
JOHN J. LAMULA

October 28, 1976
10:10 a.m.

* * * *

(In open court, jury present.)

THE COURT: I am sorry to have kept you waiting this morning. We have a technical problem with a different criminal case that held us up a bit.

If you are curious as to why it is we are dispersing criminal matters around a civil case, Congress passed last year a Speedy Trial Act which compels the court to give precedence to criminal matters and to try them and dispose of them very rapidly, and it doesn't create a great problem with respect to the criminal cases but it raises havoc with the civil cases because we very often have to interrupt and discontinue and adjourn them in order to give the criminal matters priority, so I take the criminal matters before and after the civil matters everyday.

In any event, we are prepared to proceed at this time. I believe we have a witness on the stand.

BERNICE C. GRUPE, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. BLUM:

Q Mrs. Grupe, at the time we concluded yesterday, I think we left you in the Buffalo Public Library.

A. Yes, sir.

Q. I guess that's a good spot to resume.

What is it you and your sister did there?

A. We asked the librarian for Moody's and Standard and Poor's with the idea of looking up something about the investments which I held.

Q What happened?

A. We examined, we read, I remember particularly Allegheny Beverages. I had the list with me. We looked them up, not every one of them, but we were horrified at some of the things that we read, such as the ratings, the fact that they were involved with SEC and that they were not considered -- that some were labeled speculative, something I didn't know.

Q I show you a group of exhibits, all previously marked in evidence as Defendants' D, G. H, C, A, B, E and F.

THE COURT: Under what number are these?

MR. BLUM: These are all defendants' letters. They were previously marked on depositions as defendants' exhibits.

Q I ask you if you can identify those documents for me.

A. Yes, sir.

Q What are they?

A. They are Xerox copies of the pages of Moody's Industrial Manual.

Q How did those Xerox copies come to be made, if you know?

A. In the library.

Q Was that done by your sister and you?

A. Yes, sir.

Q There are some ink markings on some of these. I show you Defendants' G, which has some ink markings here.

Do you know how those came to be on them? Were they made by you at the time or by your sister?

A. One of us. I couldn't be exact.

Q Do those indicate passages that were read by you at the time?

A. Yes, sir.

Q This one, Defendants' G says, "Long term" -- this is Technical Operations, Inc., and the two marks are next to "Long-term debt, Technical Operations, Inc., convertible debentures 8 percent due 1995," and the next mark is next to a line which says, "Security, not secured, subordinated to all senior debt."

In some instances I see there are ink markings around the ratings.

Were those put there by you?

A. To the best of my recollection, yes.

Q. I see one here marked Defendants' Exhibit B with some ink markings on them. Do you recall -- it relates to Arwood Corporation.

Do you recall whether those markings were made by you or your sister at the time you reviewed these?

A. As far as I recollect, yes, because of what it says here. I wanted to point that out.

Q. This is Defendants' B and relates to Arwood Corporation. There is a mark next to where it says rating B, and a mark next to where it says, "Security. Not secured, subordinated to all senior debt." There is a mark next to a line which says, "Credit agreement. Outstanding December 31, 1972, 2 million --"

MR. GOLDSTEIN: I object at this point.

The document Mr. Blum is reading from contains information about other securities which are issued by the various company, and I do not think what he is reading from refers to the security necessarily that Mrs. Grupe purchased.

MR. BLUM: You may read with me, if you wish. You have copies of these exhibits.

MR. GOLDSTEIN: I have no objection. I withdraw my objection.

MR. BLUM: Outstanding December 31, 1972, 2,100,000, under credit agreement with a number of banks for line of credit in amount of 2,100,000 due June 1, 1973.

Then there is a mark next to a line which says "Dividend in arrears," at December 31, 1972, dividends of $140,000 are in arrears $1 per share.

Then there is a line where it says in liquidation entitled to $25 per share.

Q. This one which is marked Defendants' Exhibit C, there are ink markings there.

Is your recollection the same with regard to those ink markings?

A. That would be my recollection.

MR. BLUM: This refers to something ink marked Inflight Motion Pictures, Inc., convertible subordinated debentures, 6 percent is due 1989, rating B. And there are markings. The other markings are Security, not secured, subordinated to all senior debt.

Q. After you and your sister left the library, what did you do, Mrs. Grupe?

A. We went home and I made arrangements to come to New York.

Q. What arrangements did you make?

A. I called my nephew William Morris and told him I was coming to New York and he thought it was a good idea. I was coming to see Mr. Lamula.

Q. Why did you plan to go to New York?

A. Because I was panicky about my securities.

Q. When you got to New York -- withdrawn.

Did you bring the securities to New York with you?

A. Yes, sir, I brought everything I had from Mr. Lamula to New York.

Q. What did you do when you got to New York?

A. Put them in a security box at the Hilton Hotel and went to see my nephew.

Q. Why did you go to see your nephew?

A. Because in the meantime he had looked up my securities and told me --

MR. GOLDSTEIN: Objection, your Honor.

THE COURT: Sustained.

Don't tell us what he told you.

Q. Why did you go to see him? What was your intention when you went to see him?

A. To get his opinion of the securities I had.

Q. Did you ask his opinion of the securities?

A. Yes, sir.

Q. After you received his opinion with respect to the securities, what did you do?

A. I went back to the hotel and called Mr. Lamula.

Q. What did you say to Mr. Lamula?

A. I told him I was passing through New York going to see my son.

Q. And what did he say to you?

A. He invited me for dinner.

Q. And what did you say to him?

A. I accepted.

Q. And then what happened?

A. He picked me up in front of the Hilton Hotel, took me to a restaurant in Greenwich Village, I don't know the name, and we had dinner.

Q. Was there any discussion at the dinner with regard to these securities?

A. Yes, sir.

Q. What was that discussion?

A. He asked me when I was leaving for New Jersey.

Q. What did you say to him?

A. I told him I had no intention of going to

New Jersey, I had come down to find out about my securities and I wasn't leaving until I found out.

Q What did he say to you?

A. He was surprised. I don't remember his exact words but I am sure they were --

Q What was the substance of what he said?

A. I'm sure it was something reassuring but I wouldn't want to quote it.

Q What did you say to him that you wanted to find out about the securities?

A. That I wasn't satisfied with the quality of them and I wanted to find out more about them. I didn't think I knew enough about them.

Q What did you tell him about the quality of the securities?

A. I understood they weren't good, but I'm not sure I said it then because the conversation was very short on the securities.

Q Following dinner, what happened?

A. We walked around Greenwich Village, he dropped me off in front of the hotel and said he was taking a 12 o'clock plane for Washington.

Q Was there any discussion at all about the securities in the course of this walk around Greenwich

Village or on the way home to the Hilton Hotel?

A. Not in the walk around Greenwich Village but as he was dropping me off at the hotel it was like an ejaculation, he said, "You are trying to ruin me."

Q. What did you say to him?

A. I said, "It wouldn't be possible for me, for one person to ruin someone else, they would have to do it to themselves."

Q. Now, did you communicate with Mr. Lamula after that point?

A. Yes, sir.

Q. When?

A. He called me the next morning.

Q. Where were you?

A. At the hotel.

Q. What was said?

A. He said he and his brother had stayed up all night long trying to straighten out my account.

Q. And what did you say to that?

A. I don't remember that I remarked about that, but he did invite me to come to his office.

Q. And what did you say on his invitation?

A. I refused.

Q. What then happened?

A. As I remember, he called me again and asked if he could come to the hotel.

Q. What did you say when he asked if he could come to the hotel?

A. I said, "Yes."

Q. This all took place, we haven't given it a time frame -- can you recall when you came to New York and when this dinner and telephone conversation the following day occurred?

A. To the best of my knowledge, I came on Tuesday because as I remember it I went to the library on Monday, came to New York on Tuesday, and this would have taken place on Wednesday, to the best of my recollection.

THE COURT: What month?

THE WITNESS: That would be July.

Q. Was it the beginning, the middle, or the end of July?

A. It would have been the last week, I believe. I have the hotel receipts to prove when I was in New York.

Q. We will come to those in a minute. Let's follow the discussions with Mr. Lamula.

Before Mr. Lamula came to your hotel, did you have any other conversations with Mr. Morris?

A. Probably. I probably told him -- I am sure I told him Mr. Lamula was coming to the hotel.

Q. In either that conversation or the earlier conversation which you had had with Mr. Morris, did you ask him any questions about the current value of the securities?

A. You mean money value?

Q. Yes. What they were worth.

A. Not at that time.

Q. Now, did Mr. Lamula come to the hotel?

A. Yes, sir.

Q. About what time of the day was that?

A. Approximately between two and 3 o'clock.

Q. Where did you meet with him?

A. He came to my room. He didn't call from the lobby.

Q. What transpired there?

A. He went over all the yearly reports of what I owned, which is, to the best of my recollection, the first time they were ever gone over.

Q. What did he say about them, if you recall?

A. That they were all good investments.

Q. Was there any discussion that you had with him about their worth or value at that time?

A. Yes. I told him I had lost confidence in them, that I had lost confidence in them, that I did not want them, and that I wanted them sold.

Q. Did you tell him anything about ratings? Was there any discussion about ratings?

A. Yes, sir.

Q. What did you tell him?

A. I had those copies of Moody's. I showed them to him.

Q. Did you have any discussion with him about the ratings?

A. Yes, sir.

Q. What did you say about the ratings and what did he say about the ratings?

A. I said the ratings -- I thought I had A's -- by that time I had a little knowledge of ratings, and I thought I had quality investments. I had learned I did not and I didn't want to keep them.

When he saw the pages of Moody's, he told me they were not reliable and that I wasn't to pay any attention to them, that they -- one I remember, and I believe it was Arwood which was in trouble with the Securities, had been settled even though Moody's didn't say so.

Q. This chart up here which shows ratings, Mrs. Grupe, have you reviewed that chart?

A. Pardon?

Q. Have you reviewed this chart?

A. Cursory. I have looked at it.

Q. Is it in accord with your recollection of the ratings as you and your sister learned them to be?

A. Yes, sir.

Q. Mr. Lamula, you said, had some discussion with you about annual reports?

A. Yes.

Q. What was the discussion that he had with you about annual reports?

A. I don't believe I could call it a discussion. He read from them. There was no give and take of discussion. He read what he thought was important from the annual reports. And as I remember, and I'm not sure on this point, I think he did underline some things.

Q. Did you ask him any questions about them?

A. No, sir.

Q. Did he bring annual reports with him or had you them with you?

A. I know I had mine with me. I don't know whether he brought another copy or not. I can't recall that. But I had mine.

Q. Did you comment at all on his reading of the reports to you?

A. Yes, sir. I told him that there wasn't much point in going on, I had made up my mind these were not the kind of securities I wanted.

Q. What did you then say?

A. I asked him to sell them.

Q. What did Mr. Lamula say?

A. He was very surprised and made no offer at all to sell them.

Q. What conversation was there, if you can recall, on that subject with him at that time?

A. If my memory serves me correctly, my investments were such that they didn't need to be sold and that I was in good hands. That's as close as I can get, I'm sorry.

Q. How did this meeting end? What were the final words of the discussion?

A. Mr. Lamula asked me if I felt better about my securities and I said, "Not one bit," and he left to go to a meeting.

Q. Following that meeting, did you have occasion to meet with Mr. Morris again?

A. Yes, sir.

Q. When was that?

A. The next morning.

Q. Why did you go to see Mr. Morris the next morning?

A. Wait a minute, let's get this in framework, if I may.

Q. Please.

A. I believe Thursday I didn't do anything, I think I stayed in my hotel. I think it was Friday morning I went to Mr. Morris. It's one day or the other.

Q. And this is again at the end of July or beginning of August?

A. Yes, sir.

Q. Of 1974?

A. Yes.

Q. Why did you go to see Mr. Morris?

A. To get my securities sold.

Q. Well, did you call Mr. Morris before you went to see him?

A. Yes, sir.

Q. What did you say to him? What did he say to you?

MR. GOLDSTEIN: Objection.

THE COURT: I will allow what she said to him.

A. I asked Mr. Morris how much I was worth, how much my securities were worth, as of that day.

Q. Was there anything else that you said to him in that discussion? This is on the telephone before you went to see him?

A. I made an appointment to go over to his office.

Q. All right.

And when was that? When did you go to his office?

A. Friday morning.

Q. Now, in his office Friday morning, what did you ask him?

A. Again, how much money had I lost.

Q And was there anything else that you did while you were at his office?

A. (No response.)

MR. BLUM: Withdrawn, your Honor.

May I approach the bench with counsel?

THE COURT: All right.

(At the bench.)

MR. BLUM: Once again this comes to the question of the nature of whether or not this is hearsay, and I again respectfully urge that the conversations that took place there which are not being offered for the purpose of proving what the values were are a very important part put in issue by their affirmative defense.

THE COURT: Wait until they put in evidence doing that and then you can in rebuttal meet it. Just the fact that you are anticipating it doesn't make it admissible at this point.

You don't have to get in what she told him. All you have to get in is that he gave her some advice as the result of which she took some action. What action did she take.

MR. BLUM: You are saying then in redirect if he goes on cross into the questions of what she sold and how she sold, I can return to this subject and ask further questions?

THE COURT: Yes, depending on how it comes about. You are anticipating something which may occur but hasn't occurred as yet.

MR. BLUM: All right.

(In open court, jury present.)

Q Was there anything else you did while you were at Mr. Morris' office at that time?

A. I made a telephone call but I made it from my hotel room to Mr. Lamula.

Q What did you say to him?

A. I asked him how much my investments were worth.

Q. What did he say to you?

A. He said it would take him all day to find out.

Q. And what did you say to him?

A. "Fine, I'll call you at 5 o'clock."

Q. Was that the sum and substance of that conversation?

A. Yes, sir.

Q. Did you have another conversation with Mr. Lamula that day?

A. No, sir.

Q. Was there any other time that you spoke with Mr. Lamula or heard from him with regard to the question you had put to him?

A. I called him back at 5 o'clock.

Q. Yes? And was your question answered?

A. He told me he was unable to get the information within a day. He had some of it but he estimated I was worth about $93,000.

Q. Did you make any comment on the value of your securities at the time?

A. Yes, sir.

Q. What did you tell him?

A. I told him I knew I was worth $63,000.

Q. Did you tell him how you knew it?

A. Yes, sir.

Q. What did you say?

A. I told him my nephew got the information from the stock market at ten minutes after ten in the morning.

Q. Was there any other conversation which you had with Mr. Lamula at that time?

A. Only a few words to the fact that I had -- that I was through with any association with him. I don't remember the exact words.

Q. From that time until the start of this lawsuit, have you had any conversation with Mr. Lamula or seen him?

A. Yes, sir.

Q. When next after that did you either see or speak to him?

A. At the testimonial dinner for Dorothy Emerson.

Q. When was that, approximately?

A. Approximately October.

Q. Of that same year?

A. Yes, sir.

Q. Was there any discussion which you had with him at that time with regard to these financial matters?

A. No.

Q. That was a public function, is that correct?

A. Yes, sir.

THE COURT: Why were they giving Miss Emerson a testimonial dinner?

THE WITNESS: She was retiring, Judge.

THE COURT: How old was she?

THE WITNESS: Seventy-five.

THE COURT: This was back in 1974? What year was this testimonial dinner?

THE WITNESS: It was last year, wasn't it, the testimonial dinner? Maybe it was '74.

THE COURT: A year or two ago in any event?

THE WITNESS: Yes, sir.

THE COURT: That means she is in her late seventies now.

THE WITNESS: Yes, sir. I guess she is seventy-seven, Judge.

Q. After this telephone conversation in the afternoon of that particular day, did you -- what did you then do with regard to your securities?

A. I left them in the hotel safe until Monday morning.

Q. What did you do on Monday morning?

A. I took them to my nephew's office, Will Morris.

Q. What did you say to your nephew when you took them there?

A. That I wanted them sold.

Q. What followed that, if anything, in your conversation with Mr. Morris? What did you do?

A. I went to L.F. Rothschild with all of my securities.

Q. Who did you see there?

A. Robert Loeb.

Q. What did you say to Mr. Loeb?

A. The conversation was very brief. I said --

Q. What did you say to him?

A. I handed him the securities and asked him to sell them.

Q. Did you give him any reason when you spoke with him about why he should sell them?

A. Yes. That I understood they weren't any good.

Q. Did you tell him where or the source of your understanding that they weren't any good?

A. Yes, sir.

Q. What did you say that source was?

A. My nephew.

Q. Were there any papers you filled out while you were at the offices of Mr. Loeb at the L.F. Rothschild place?

A. Yes, there were two.

Q. What were those?

A. One was an account number. The other was permission to sell the securities.

Q In connection with this that day or the day before or the day after, were there any other papers you filled out with regard to your investments?

A. Yes, sir.

Q. What were they?

A. With my nephew, with a power to make suggestions as to my investment counselor.

THE COURT: Who was to have this power, your nephew or Mr. Loeb?

THE WITNESS: My nephew.

Q. Why was it that you gave this power to your nephew?

A. Because I felt that I had proof that my investments were not reliable and I trusted my nephew.

Q. I show you a group of exhibits, all previously labeled in evidence as Plaintiff's 45. There are --

MR. GOLDSTEIN: Your Honor, they were labeled into identification. There is a question about being labeled into evidence.

THE COURT: All right. They are only marked then for identification.

xxx (Plaintiff's Exhibit 45 marked for identification.)

Q Can you identify these documents? Do you know what they are?

A. Yes. This is the sale of the securities.

Q Did you receive documents like these or duplicates of these at the time that those -- shortly after the time you filled out those papers and spoke to Mr. Loeb?

A. Yes, sir.

MR. BLUM: I offer them in evidence.

MR. GOLDSTEIN: Objection, your Honor.

THE COURT: On what grounds?

MR. GOLDSTEIN: If we can approach the bench.

THE COURT: All right.

(At the bench.)

THE COURT: I did not understand her answer. Are these the exact ones she got or are these copies of the ones she got?

MR. BLUM: These are duplicates.

THE COURT: Have you established what became of the original ones she got?

MR. BLUM: I will ask her.

THE COURT: I think you have to do that, but let's face your other objection at the moment.

MR. GOLDSTEIN: Assuming that is done, I have a lengthy objection and I think perhaps it would be best outside the hearing of the jury.

THE COURT: All right. Go ahead right now.

MR. GOLDSTEIN: My objection would be on the following. These are merely documents that were sent to her by L.F. Rothschild, they do not reflect a sale, they do not say if it was sold, they do not say how it was sold. All it indicates presumably that these matters were sold. They are not identified as being sent by L.F. Rothschild except that she got them.

For all we know, and I have no reason to believe so, these could be forgeries. For all I know, and I again have no reason to believe so, they could have just been made up without any underlying sale. We don't know. Without having somebody from L.F. Rothschild come down and say yes the business record show thus-and-thus and these reflect sales that took place on such a date from our records. Otherwise we don't know anything.

THE COURT: Your argument is rather scrambled. These are notifications of sales from Rothschild. Rothschild is telling her by this notification that they have sold certain securities at a certain price.

Incidentally, who is Mid-Atlantic Consultants?

MR. BLUM: Will Morris' firm.

THE COURT: Once we establish -- once we are over the best evidence rule, the documents are admissible for the purposes of showing what Rothschild advised her about the sale and what price they credited her with for the sales.

I grant you it's not proof that, in fact, Rothschild did sell them or to whom they sold them or whether they were sold for the best price possible, and they are not being admitted for that purpose.

MR. BLUM: I would point out no issue has been raised as to who the securities were sold to. If he were to raise that question now, I would certainly claim the raising of an issue not previously raised.

MR. GOLDSTEIN: If your Honor could direct the jury they are not proof these issues were sold at the time they are admitted in evidence.

THE COURT: They are proof Rothschild said they sold them.

MR. GOLDSTEIN: Yes.

THE COURT: I will leave it as that. Get over the best evidence aspect.

MR. GOLDSTEIN: I still have my objection to the whole.

(In open court, jury present.)

Q. One other question, or another question or two about these documents, Mrs. Grupe. They each say on the face of them that they have your name and they also have Mid-Atlantic Consultants.

A. That's right.

Q. What's Mid-Atlantic Consultants?

A. That's my nephew's company.

Q. Did you receive counterparts of these?

A. Yes, sir.

Q. What did you do with them, if you know?

A. I probably put them in a drawer.

Q. Have you seen them or brought them with you, delivered them to me?

A. Yes, I think so. Haven't I?

Q. I have not seen them. I have never seen them.

A. Oh, I bet my nephew still has them. I don't know. I have to say I don't know.

Q. Do you know where the copies that you received, of which these are counterparts, are now located?

A. For a fact, no.

Q. Was there any occasion in connection with this case when I asked you to examine and hunt for and send to me all of the documents which you had at your own home with regard to this litigation --

A. Yes, sir.

Q And did you do so?

A. Yes, sir.

MR. BLUM: Your Honor, I can advise the Court that we do not have them in our files.

THE COURT: You are now offering these documents?

MR. BLUM: I am now offering these documents in evidence.

THE COURT: And the defendant makes the objection stated to me previously?

MR. GOLDSTEIN: And in addition, your Honor, on the best evidence rule I don't think there has been a finding, number one, that the plaintiff made a search for these particular documents -- I mean I believe the testimony was send me whatever you can find.

Number two, she obviously doesn't know where the documents are but she knows she had them at one point and she does not explain why they are not in her possession now.

Finally, there is no testimony as to where those came from.

THE COURT: The latter part is well taken, but let's clarify the first part.

Is it your present belief that you may have given those that you received to your nephew?

THE WITNESS: That is my present belief.

THE COURT: Did you ever ask your nephew for them back?

THE WITNESS: No, sir.

THE COURT: Where is your nephew now?

THE WITNESS: In New York.

THE COURT: Counsel, have you ever sought them from her nephew?

MR. BLUM: Yes.

I may be able to clarify the witness' recollection with regard to this point, if your Honor will permit me.

Q. Mrs. Grupe, do you recall meeting in my office early in September 1975 in preparation for the deposition which was taken of you the following days by Mr. Goldstein and me?

A. Yes, sir.

Q. Do you recall that Mr. Morris was with us at that time?

A. Yes, sir.

Q. And do you recall my asking Mr. Morris if he had -- asking you if he had or he if he had the L.F. Rothschild brokerage advices, the confirmation slips?

A. Yes, sir.

Q. And do you recall whether or not he produced them?

A. Yes, sir.

Q. Did he produce them?

A. As I recollect it, he went and got them.

Q. And to the best of your recollection, are those the documents which he produced?

A. I wouldn't want to make a flat statement. I thought they were white, but I could be wrong.

Q. Do those --

A. I am sorry.

Q. I understand.

THE COURT: Counsel, I have to speak to our chief deputy clerk for a moment.

Let me suggest that you may have to either take the stand yourself to trace these documents --

MR. BLUM: I hoped to avoid calling someone from L.F. Rothschild, but I have arranged to do it if necessary.

(Pause.)

THE COURT: Please continue.

Q. Mrs. Grupe, this occurred a little over a year ago.

You do recall your deposition was taken at some length by me and by Mr. Goldstein in my office, do you recall that?

A. Yes, sir.

Q. I show you this document and ask you if this is your signature. This is the transcript of the deposition taken at the time.

A. Yes, sir.

Q. I am reading to you from Page 156 of that deposition on Line 6, and following.

"Q. --

MR. GOLDSTEIN: Your Honor, before Mr. Blum reads, for what purpose is he reading this since he has the witness on the stand?

THE COURT: I believe he is attempting to refresh her recollection.

MR. BLUM: Yes.

MR. GOLDSTEIN: I just wanted the record to indicate that.

Q. "Q. Did you subsequently receive confirmations of transactions?

"A. Yes, sir.

"Q. From L.F. Rothschild?

"A. Yes, sir.

"Q. I show you nineteen confirmations of which six are yellow marked Duplicate and indicate sales and two are green and marked Cancellation and ask you if you can identify them?

"A. Yes, sir.

"Q. What are they?

"A. These are notices, as I understand it, that say these bonds were sold.

"Q. Did you receive copies of these communications from L.F. Rothschild?

"A. Yes, sir."

Now, with that having been read to you, does that refresh your recollection as to whether the documents before you identified as they are as Plaintiff's 45 for identification were indeed the duplicates produced by Mr. Morris?

A. Yes, sir.

MR. BLUM: I offer them in evidence.

MR. GOLDSTEIN: Again, I object.

There has been no testimony as far as the availability of the originals, no adequate explanation.

In addition, what Mr. Blum read, I don't see how that can refresh Mrs. Grupe's memory. She said she got those from L.F. Rothschild in the testimony that Mr. Blum just read.

THE COURT: Will you hand me the exhibit, please?

(Exhibit handed to the Court.)

THE COURT: I would suggest to both of you that your problem here stems from the fact that the confirmations were addressed to Mid-Atlantic Consultants and it's quite probable that Miss Grupe received the duplicate to start off with, that these are in fact what she received, the originals having gone to Mid-Atlantic Consultants, her nephew's firm.

MR. BLUM: Again, your Honor, her recollection she said was refreshed by a question which said did you receive copies of these communications from L.F. Rothschild.

THE COURT: I think this is probably what she received, what we have right here as 45.

MR. BLUM: It may well be, but have we not sufficiently identified it?

THE COURT: We have covered the best evidence rule adequately.

With respect to the rest of the objection, I direct the jury that these are admitted in evidence only for purposes of establishing what L.F. Rothschild advised Mrs. Grupe had become of her securities, what they credited her account with, and the other details revealed thereon. They are not admitted for proof of the fact that Rothschild did do these things. Only Rothschild & Company would know that.

xxx (Plaintiff's Exhibit 45 received in evidence.)

THE COURT: I am assuming that there will be independent evidence from the yellow sheets as to what the value of securities were on the trade dates.

MR. BLUM: Yes, your Honor. There will be independent evidence from National Quotations Bureau, which as I understand it counsel does not contest the authenticity of, as to the quotes to the extent those quotes appeared on the date or as closely as they appeared before or after.

THE COURT: All right.

Q Now, I would simply like to identify these amounts.

Withdrawn.

MR. BLUM: Mr. Goldstein, I take it you do not question the accuracy of the column listed as Sales Proceeds as reflecting the numbers shown on these slips of paper as reflecting what L.F. Rothschild advised Mrs. Grupe they had received as proceeds.

MR. GOLDSTEIN: No. I just admit that those figures appear on those yellow sheets, that is all.

THE COURT: And that the arithmetic is accurate. In other words, if you subtract the sales proceeds from the cost, the loss is arithmetically correct.

MR. GOLDSTEIN: Yes, your Honor.

MR. BLUM: I would like to pass these to the jury.

THE COURT: Since they have in front of them a recapitulation, I would suggest we shouldn't stop to allow them to look at it. Let them look at it as the evidence goes on.

MR. BLUM: I quite agree, your Honor.

BY MR. BLUM:

Q Let me pick up one or two loose ends, Mrs. Grupe.

With regard to the purchase that was made for your account by Mr. Lamula in July of 1974 of Elco, which we earlier identified as Plaintiff's Exhibit 33, did you at the time you learned of this know what Elco Corporation was or did?

A No, sir.

Q. In the conversation that you had with Mr. Lamula which you told us about which followed that by five or six days, did Mr. Lamula enlighten you about what Elco was or did?

A. No, sir.

Q. I have a few other questions about your initial discussions with Mr. Lamula which occurred in the spring of 1974. You told us that there were certain things that -- I asked you certain questions about whether various things were mentioned to you and some of them you commented on. One was over-the-counter, as I recall.

Let me ask you, if you had known how those bonds, how those debentures, were rated at the time Mr. Lamula was recommending that you buy this group of bonds, would that have affected your decision?

A. Yes, sir.

Q. If you had known anything about -- if you had known that Mr. Lamula was selling them to you for his own profit, do you think that would have affected your decision?

A. Yes, sir.

Q. If you had known that those debentures were not secured and that they were subordinated to the payment of all other debt to institutions or all other bond obligations of the corporations involved, would that have affected your interest in them?

A. Yes, sir.

Q. If you had been advised as to any of these that the ratio between the amount of money they owed and their worth was such that indicated that their debt far exceeded their worth, or was a great portion of their capital, would that have affected your interest?

MR. GOLDSTEIN: I object to that question. There has been no testimony that such is the fact.

THE COURT: I have to look at the Standard and Poor's and Moody's, but rather than stop to do that at the present time, put it in a hypothetical.

MR. BLUM: I thought I had, but I will.

THE COURT: In a double hypothetical, if that is the fact then would you have.

Q. All right.

Assuming that it's the fact that in the spring of 1974 every one of these companies had a debt structure so that the amount of money they owed was a very, very large proportion of their capital, their capital structure, would that have affected your decision as to whether or not they should be bought for you?

A. Absolutely. This was all the money I had in the world. I couldn't risk it for anything.

Q. If you had been told in the spring of 1974, at the time that these securities were recommended to you, that the principal rating services had indicated that they didn't have enough information about some of them and that as to all of the others there were substantial questions as to the continuation of their interest payments, would that have affected your decision as to whether or not to buy them?

MR. GOLDSTEIN: Again, I object to the question.

I think counsel is trying to mislead the jury. He is putting in as facts matters which are simply not so.

THE COURT: You are mixing apples and oranges. Why don't you stick to one thing. You have established the fact several of them weren't rated at all, none of them higher than B, and several of them were triple C.

MR. BLUM: As your Honor knows, we intend to regard proof as to the meanings of the ratings and all I am doing is laying that foundation.

THE COURT: I understand.

Q. If you had known that the ratings, the ratings services had indicated with regard to these debentures that those which had a CCC or a B rating were either regarded by -- regarded by either of the rating services as outright speculation or as having questionable features for continuation of interest, would that have affected your investment decision?

A. Yes, sir.

MR. BLUM: Your Honor, I have no further questions of this witness at this time.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q. Mrs. Grupe, you testified yesterday I believe that you got your first degree in 1936?

A. That's right.

Q. Did you subsequently get another degree?

A. Yes.

Q. What degree was that?

A. Ed.M.

Q. What is that?

A. That's a Master's in Education.

Q. You have been married twice, have you not?

A. Yes.

Q. When did you get married for the first time?

A. 1938.

Q. And when were you divorced?

A. 1967.

Q. What month?

A. December.

Q. And when did you remarry?

A. December.

Q. Of what year?

A. 1967.

Q. Shortly after your first divorce?

A. Yes.

MR. BLUM: Objection. I don't think this is a relevant question.

THE COURT: I don't know where it's leading yet, either, but I am assuming it's going to lead somewhere.

MR. BLUM: Then I reserve my objection to see if it leads in the wrong direction.

Q. You had three children of your first marriage?

A. Yes, sir.

Q. And I believe yesterday you testified that your first husband, Mr. Clark, didn't let you in on any of his financial dealings, if any?

A. That's right.

Q. And you did not know how much money he was making?

A. No, sir.

Q. And I believe you also testified that he did not contribute to the schooling, the college schooling, of your children?

A. That's right.

Q. You had to do it on your own?

A. Yes, sir.

Q. When did you start working after you married Mr. Clark?

A. I did substitute work from the time my son was in first grade, my youngest son, which would be twenty-one years ago. I took my first steady job in 1954.

Q. And how much money were you making?

A. Approximately $6500 or 7,000. I wouldn't remember.

MR. BLUM: May we have a time frame of that?

THE COURT: I don't know why we are doing this at all. We have had five minutes of summation of what she testified to on direct.

When are we going to get on to some new topics?

MR. GOLDSTEIN: Right now, your Honor.

Q. I believe you stated there came a time you worked for IBM?

A. I am sorry, I didn't hear you.

Q. There came a time you worked for IBM?

A. Yes, sir.

Q When was that?

A. I believe it was 1960 to 1967.

Q And you testified you were getting a per diem rate of $50 a day plus expenses?

A. Right.

Q If I may, I will read some testimony to you on Page 13 of your deposition that Mr. Blum previously read. These are questions by Mr. Blum to you. Beginning on Line 15:

"Q Did you have any other employment at that time?

"A. Yes, sir.

"Q What did you do?

"A. I was an educational consultant to IBM.

"Q Where were those services performed?

"A. All over the United States.

"Q What was your compensation for that function?

"A. It ranged from $150 a day to $200 a day plus expenses."

That's a little more than $50 a day, is it not?

A. I started at $50. When IBM bought out Science Research, they raised my salary.

Q That is not what you said to Mr. Blum when he asked you what your compensation was.

A. I only got it for about a month.

Q. But isn't it so your answer, and I repeat on Line 23 of your answer, you said it ranged from $150 to $200 a day?

A. When I left. When I left.

Q. Okay.

Now, you own some property down in Port Charlotte?

A. No longer.

Q. But you did?

A. Yes, sir.

Q. When did you buy that?

A. 1954, about. I don't remember the exact date.

Q. Did you husband -- at that time Mr. Clark -- invest with you?

A. No, sir.

Q. It was just yours?

A. Yes, sir.

Q. Did you have to give a down payment?

A. $10.

Q. How did you come to know about this property down in Florida?

A. A friend of mine was selling it.

Q. Did you inquire why it was a good investment?

A. May I explain?

Q. Yes.

A. Every cent I was earning was going out and I wanted something I could say was mine, so when the friend advised me that buy this lot, I bought it. He picked it out.

Q. Did he tell you why he thought it was a good investment?

A. I don't think we went into much detail about it. It was just something I wanted to own.

Q. And you owned it?

A. Yes, sir. After ten years.

Q. Do you know that under Florida law if you are paying installments, you do not own the property until after you have paid the entire amount? Do you know that?

MR. BLUM: I object to the question, your Honor. I don't see what possible relevance it can have.

THE COURT: I don't, either, but again in the hope that we are going somewhere, I will allow the witness to tell us whether she is familiar with Florida law on that point.

A. I am familiar to the point that I got the deed after it was all paid for. That's all I know.

THE COURT: All right.

A. And I paid taxes on it all the time.

Q. Okay. And --

THE COURT: You paid $10 a month for how many years?

THE WITNESS: Ten, sir.

Q. Ten years?

A. Yes.

Q. Again I read from your deposition on Page 179, Line 14.

"Q. How much was that land worth?

"A. I paid $895 for it.

"Q. When?

"A. $10 a month for seven years."

Now, this deposition was taken on June 3, 1975.

Your memory was a little fresher than it is today?

MR. BLUM: May I have the page you are referring to?

MR. GOLDSTEIN: Page 179.

Q. Your memory was a little --

A. It could have been, yes, sir.

Q. So it might have been seven years instead of ten?

A. It could have been, yes, sir.

Q. Prior to marrying Mr. Grupe, did you question him about his finances?

A. No, sir.

Q. Did you ask him if he would be able to support you and your children?

A. He offered that information.

Q. What did he say?

A. He said I would never want for anything and he would finish the education of my boys and support my invalid mother.

Q. At the time you married him, how much money did you have that you could call your own?

A. $1,000.

Q. After you got divorced from Mr. Grupe, I believe you testified you got a net of $138,000?

A. Yes, sir.

Q. What did you do with that money?

A. I bought a second-hand car, I --

THE COURT: I thought we went over this yesterday in great detail.

MR. GOLDSTEIN: There are some discrepancies, your Honor.

THE COURT: All right.

Tell us again what you did with the $138,000.

A. I bought a second-hand car, I furnished an apartment, I paid rent on it, I gave money to my son for his home, and I put some in a savings bank.

Q. You gave money to your son?

A. Yes, sir.

Q. Again, I refer to Page 29 of your testimony, Mr. Blum's questioning of you:

"Q. What happened to the other $38,000 after you had bought the CD?

"A. I had to buy a car, furnish a home and live.

"Q. So what did you do with it? Did you spend it on those things?

"A. Yes, sir, and put the rest in a savings account.

"Q. How much did you put in a savings account, et cetera"?

You didn't mention at that deposition giving your son any money, did you?

MR. BLUM: I object to a reading and stopping with an et cetera.

I think the answer to that question was how much did you put in a savings account? "A. I can't honestly remember."

And I think it only fair to indicate to the jury what the next question and answers were, too.

"Q. Was it as little as 5,000 or as much as 35,000 or somewhere in-between?

"A. It would have been more around between fifteen and $20,000."

THE COURT: All right.

I gather, though, the point he is trying to bring out, albeit I can't see its importance, is she didn't mention the fact she had given some money to her son during the deposition, is that the point you are trying to make?

MR. GOLDSTEIN: Yes.

THE COURT: How much money did you give your son?

THE WITNESS: $11,000, but it was not at that time. It was a little later.

THE COURT: Continue.

Q. There came a time during your marriage to Mr. Grupe that you found out that he invested in stocks, bonds or whatever, isn't that so?

A. Yes, sir.

Q. And, in fact, he had a stockbroker who I believe you testified lived next door and was a neighbor?

A. Yes, sir.

Q. And this man came in quite often to see your husband?

A. Not often.

Q. Did Mr. Grupe discuss any of his investments with you?

A. No, sir. Maybe a casual remark that one had gone up or down, maybe. A casual remark such as that, that was all. No, he never discussed amount or anything.

Q. Did he discuss how the stock market works?

A. No, sir.

Q. Did you know what he meant when he said a stock went up or down?

MR. BLUM: Objection, your Honor.

THE COURT: I will allow it.

MR. BLUM: He can ask her what she understood it to mean, but did she know what he meant when he said something I think is asking for the working of his mind.

THE COURT: Reframe the question to be did you understand any references to stock going up and down, did you have an understanding at that time as to what that expression meant?

THE WITNESS: Yes, I think so. It was a happy day or a bad day.

THE COURT: All right.

Q. I am sorry, Mrs. Grupe, but that doesn't exactly answer the question.

Did you know what it meant?

A. That stocks fluctuate, yes.

Q. Stocks fluctuate?

A. Yes.

Q. And did you know -- strike that.

Did you know they were traded on an exchange?

A. I know they were bought and sold.

Q. Did you know where?

A. I have heard of the American Stock Exchange but I don't know where it is or what it does or how it operates.

Q. Did you hear of the New York Stock Exchange?

A. The same way.

Q. You don't know how they operate or where they are?

A. No, sir. I do not.

Q. Okay.

I believe yesterday during the course of Mr. Blum's examination of you, you mentioned that Mr. Grupe at one time said something derogatory about the over-the-counter market.

A. Yes, sir.

Q Do you remember when he said that?

A. No, sir.

Q. Do you remember under what circumstances he said it?

A. No, sir, I don't recollect.

Q. Did he say it over breakfast one day?

A. I have already stated I don't remember.

Q. But you remember that he said it?

A. Yes, sir.

Q. At the time he said it, did you ask him what he was talking about?

A. No, sir. He was not anxious for me to know anything about his investments or anything at all.

Q. I don't mean that. He made a statement, something derogatory about what he said was the over-the-counter market.

Did you just leave it at that or did you say, "Dear, what is the over-the-counter market, what are we discussing"?

A. No, sir. Probably he said he did not operate on the over-the-counter market and I never asked him what he meant by that.

Q. Subsequently, you invested the $100,000 in the Bank of New York at Albany?

A. Not at first.

Q. No, not at first.

At first you invested that CD in another bank?

A. Yes, sir.

Q. And then you invested in the bank up at Albany?

A. Yes, sir.

Q. Was that pursuant to somebody's advice?

A. When it turned over after three months I believe to the best of my recollection my son said it might better be in New York State because I was in New York State.

Q. I see.

Now, this is your son the lawyer?

A. Yes, sir.

Q. Prior to your investing in the bank up at Albany, did you ask his advice about making investments with that money?

A. No. To the best of my recollection I told him -- I spoke to him when I had made the investments with Mr. Lamula.

Q. Prior --

A. I did ask him prior, yes, when we went to Rothschild.

Q. When you went to Rothschild?

A. Yes.

Q. This wasn't the time you went to Rothschild in 1974?

A. No, sir.

Q. This was a prior time?

A. Yes, sir.

Q. Prior to the time you bought the certificate of deposit?

A. Yes, sir.

Q. He took you down to L.F. Rothschild?

A. Yes, sir.

Q. Did you know at that time what L.F. Rothschild was?

A. I knew it was a brokerage house.

THE COURT: Can we fix the date a little more exactly, what year and what month?

THE WITNESS: Yes, sir. That would be -- I got the money in October of 1974, and it would have been --

THE COURT: I don't think that is right.

THE WITNESS: Maybe it was '73, I am sorry. And it would have been within the next month.

THE COURT: Around November of 1973 your attorney son took you to Rothschild brokerage?

THE WITNESS: Yes, sir.

THE COURT: Continue.

Q. What was the purpose of your going down to the brokerage house?

A. I asked my son for advice on investments and he admitted he knew absolutely nothing about it, so he spoke to a member of his firm, law firm, who handled this man's account and he recommended this gentleman in L.F. Rothchild to discuss it with him.

Q. Did you have any idea at that time what L.F. Rothschild -- what business L.F. Rothschild was in?

A. Yes.

Q. What business?

A. Investments.

Q. Investments in what?

A. Stocks.

Q. Stocks.

Now, you testified yesterday, I believe, that your family had had a bad experience during the Depression with stocks?

A. Yes, sir.

Q. And as a result you were terrified of stocks, isn't that so?

A. Yes, sir.

Q. And you went with your son down to this brokerage house that you knew dealt in stocks?

A. Yes, sir.

Q. When you were there, did you see somebody from L.F. Rothschild?

A. Yes, sir.

Q. Do you remember the man's name?

A. No, sir.

Q. Did he discuss investments with you?

A. Yes, sir.

Q. Did he first ask you what your finances were?

A. I don't recollect but probably he asked me how much I had to invest.

Q. Did he ask you your age?

A. Not that I recall.

Q. Did he ask you whether you were married or single?

A. I don't recall.

Q. Did he ask you if you had any money over and above that you were willing to invest?

A. Not that I recall.

Q. What were his recommendations?

A. His recommendations were to establish a portfolio of five stocks.

Q. Not bonds, stocks?

A. Stocks.

Q. And what did you say to him?

A. That was the end of the conversation. I didn't -- I wasn't rude, but I left the office very shortly.

Q. Did you speak to him again?

A. No, sir.

Q. Did you speak to your son again about L.F. Rothschild?

A. Not that I recall any more than a casual -- we went out to dinner, that's all.

Q. I see.

Now, subsequently you invested the $100,000 up in Albany and you went to Albany and got a job with Mr. Anderson's office, is that correct?

MR. BLUM: Can we clarify it? I don't think there's been testimony she invested the $100,000.

MR. GOLDSTEIN: With the CD.

MR. BLUM: She transferred it to the Albany Bank.

A. It was just transferred, I didn't touch it.

Q. It was when you were working for Mr. Anderson that you met Miss Emerson?

A. Yes, sir.

Q. Do you remember exactly what you told Miss Emerson you wanted to invest in?

A. I couldn't have told her what I wanted to invest in except that it would have to be -- I didn't want to invest in stocks. I didn't have any names of -- I only wanted quality and security. That I remember distinctly.

Q. Did you mention to her any possibility that you would renew the CD when it became due?

A. No, I don't think I did. Not that I recall.

Q. Was it your intention at that time to renew the CD when it became due?

A. No, I don't think so.

Q. So when the CD came due, it was your intention to be involved in some other investments?

A. That's what I was thinking about.

Q. Okay.

Now, you met Mr. Lamula sometime in March.

A. Or April.

Q. Or April.

A. I don't remember the exact date.

Q. After the first meeting with him, you had a second meeting with him, did you not, about two weeks later?

A. Yes, sir.

Q. Did you have any other meetings with him?

A. Yes, sir.

Q. How many more?

MR. BLUM: Objection.

Can we have again for the purpose of a time frame what period of time are you asking that question?

Q. Between March 1974 and the end of May 197 -- make that May 28. Not counting May 28, between March 1 and let's say May 27.

A. To the best of my recollection, it would be three or four, and no more, to the best of my recollection.

Q. Could it be less?

A. I doubt it.

Q. Again, let me go back to your testimony on Page 247, Line 23, "You had met Mr. Lamula twice up to this point?" That's in May 1974.

"A. That is correct.

"Q. Yet you were willing to give him almost $100,000 to invest on your behalf?

"A. Looking at it now, I can't understand it, but it seemed very plausible then."

Now, this again was in June 1975 when your memory was fresher because it was closer to the event, was it not?

MR. BLUM: September.

MR. GOLDSTEIN: September 1975.

Q. And at that time you said there were only two meetings, isn't that correct?

A. Didn't I qualify it?

Q. No, Mrs. Grupe, you did not qualify it.

Was that in error?

MR. BLUM: Excuse me, the answer -- I am sorry.

A. I can tell you just what I remember. That's all I can tell you. The first meeting was to meet Mr. Lamula. The second meeting he discussed stocks. I believe there was a third meeting when he was going to make suggestions. The fourth meeting would be when I gave him the check.

That's the best of my recollection now.

Q. During these meetings with Mr. Lamula, let's just review them very shortly, the first meeting what did you discuss, do you remember?

A. Mr. Lamula did all the talking about how capable he was as an investment counselor, and I do not remember at any time that he mentioned he had a company.

Q. I see.

Subsequently you found out he had a company?

A. Yes.

Q Before you purchased the securities?

A. I wouldn't want to make a statement on that.

Q. Then there was the second meeting.

What was discussed at this meeting?

A. Well, an awful lot of our conversation was about the Legislature. It was not all about investments. And there was a discussion about investments and the one investment that I remember he mentioned was about a radio station in Buffalo. He mentioned the name. I don't remember it. I don't think I recognized it. And I don't remember any other names. They may have been mentioned. I just don't remember them.

Q. I call your attention to your testimony beginning on Page 254 at the bottom of the page.

"Q. For instance, did he mention Technical Operations?

"A. I don't recall. It's possible that he did.

"Q. Didn't he, in fact, mention that Technical Operations owned a radio station in Buffalo?

"A. It's possible. Not that I recall."

So back when you had this deposition, you didn't remember him mentioning a radio station, did you?

A. If I may clarify that, I don't remember that it had anything to do with Technical Operations.

Q. But you remember --

A. I remember a radio station, yes.

Q. Okay.

A. But I couldn't give you the name of it.

Q. Now, did there come a time when he discussed investments with you?

A. Yes.

Q. Types of investments?

A. Yes.

Q. Did he mention stocks?

A. No. There was never any discussion of stocks because he knew my attitude toward stocks.

Q. And it was a very strong attitude against purchase of stocks?

A. That's right.

Q. I see.

Did he mention buying Treasury notes?

A. Not that I recall.

Q. Did he mention real estate?

A. Not that I recall.

Q. Did he mention bonds?

A. Yes, sir.

Q. And what did he say about bonds?

A. A lot of information I didn't understand.

Q. Did he mention debentures?

A. I remember the word, but not what it meant.

Q. You remember that he said the word debentures?

A. Yes, sir.

Q. Did he discuss bonds and safety? The safety of the bonds?

A. Yes.

Q. I see.

THE COURT: We are going to take a brief recess right now. The jury will be excused.

(Recess.)

(In open court, jury present.)

THE COURT: Continue, counsel.

CROSS EXAMINATION CONTINUED

BY MR. GOLDSTEIN:

Q. I believe you testified Mr. Lamula mentioned the word debenture.

A. Yes.

Q. Did he explain what it was?

A. If he did, I didn't understand it.

Q. Did you ask him questions about what you didn't understand?

A. I think you have to appreciate that all of this was completely new to me. I didn't know the questions to ask.

Q. When he mentioned the word debenture and he started to give an explanation if there was something you didn't understand, did you interrupt him and say, "Wait a minute, I lost you there"?

A. No, he just kept going.

Q. You didn't interrupt him. You just sat there and he continued talking?

MR. GOLDSTEIN: Will the record reflect the witness is nodding her head.

A. I am sorry, I apologize.

MR. BLUM: He can't catch it on the record otherwise.

A. I apologize.

Q. Did he define what a debenture was?

A. He probably did, sir.

Q. But you didn't understand it?

A. No, sir.

Q. And you didn't question him about it?

A. No, sir.

Q. Now, you were a teacher, is that correct?

A. Yes, sir.

Q. And when you were teaching your class something, you expect them to question you if there was something they didn't understand, isn't that so?

A. Yes, sir.

Q. And if you taught whatever you were teaching and said, are there any questions, and nobody raised their hand, you assumed, though it was probably proven false by tests later, that the class understood what you were talking about?

MR. BLUM: I object. I think this is a speculation that doesn't serve a purpose here.

THE COURT: I will allow it. It's a cute little question.

THE WITNESS: May I answer it?

THE COURT: Yes. He has asked the question.

A. I wouldn't ask a child in my classroom a word that I knew they didn't understand.

THE COURT: Now you wish you had not asked that question, don't you?

Q. But in this case, Mr. Lamula did not know you didn't understand it because you didn't ask him, did you?

MR. BLUM: Objection, your Honor.

I don't think we can again ask the witness to address herself to what Mr. Lamula knew or didn't know about her.

THE COURT: Reframe the question.

Q. Mr. Lamula started to define debenture to you, and you didn't stop him at any point to tell him you didn't know what he was talking about, did you?

A. When you use the word "define," I am not sure how complete the definition was.

Q. Okay.

Well, isn't it true that you are not sure because you did not understand what he was saying?

A. That's right. I didn't understand what he was saying.

Q. And you didn't tell him that?

A. I doubt that I did.

Q. So would it be correct to say that he had a right to expect that you understood what he was saying?

MR. BLUM: Again, your Honor, I object to that as a speculation.

THE COURT: Overruled.

A. I don't recall that Mr. Lamula ever asked me if I understood.

Q. You don't remember him asking whether you understood anything?

A. The word debenture we are referring to.

Q. Did he discuss the issues he was going to make investments in?

A. The types. That he was going to make some, yes.

Q. When you say "types," what do you mean?

A. Not the exact -- not what they made or anything like that, but that he knew of several companies that would be wise investments for me.

Q. Did he give you the names?

A. He could have. If he did, I don't remember them.

Q. And you authorized him to make the investments for you at some point?

A. Yes, sir.

Q. Subsequently, you testified that you went down to the bank with Mr. Lamula to get a loan against the certificate of deposit?

A. Yes, sir.

Q. By the way, I think you testified earlier today that it was your intention back in January or February, whenever you saw Miss Emerson -- I am sorry, March -- that you intended to invest the certificate of deposit proceeds in something else when the certificate of deposit expired, is that correct?

A. That's correct.

Q. Isn't it a fact that you were told by Mr. Leyden of the bank that should you want to renew the certificate of deposit, it would go from 8 percent to 7 percent interest?

A. No, sir.

Q. You were not told?

A. Not that I recall.

Q. Not that you recall, but it was possible?

A. I do not recall ever discussing my certificate of deposit with Mr. Leyden until the day I went to take it out.

Q. I see.

You were getting 8 percent interest on that, were you not?

A. If you say so, I guess I was.

Q. Do you know how much interest you were getting?

A. Not for sure.

Q. Do you know approximately?

A. It would be approximately that.

Q. 8 percent?

A. Yes.

Q. And it was a $100,000 certificate of deposit?

A. Yes, sir.

Q. Now, 3 percent of 100,000 is how much money a year?

A. Have you got a pencil and paper?

Q. Wouldn't it be $3,000 a year?

A. Yes, I guess it would.

Q. And at that time you were making 17,000 -- strike that, $7,800 on Mr. Anderson's staff?

A. Yes, sir.

Q. Atthat time you were also receiving a pension from the National -- from the Education Department of New York State, were you not?

A. Yes, sir.

Q. Of about $2,000 a year?

A. Yes, sir.

Q. So altogether you were making approximately $17,000 a year?

A. That certificate of deposit matured in six months. That wouldn't be -- yes, I guess you are right.

Q. Did you relay to Mr. Lamula how much money you wanted from your investments?

A. The amount was discussed. Who mentioned it, I am not clear on.

Q. What amount was discussed?

A. $12,000 was arrived at.

Q. $12,000 over and above all other income?

A. No. That wasn't the way it was discussed.

Q. Okay. You tell us how it was discussed.

A. I remember distinctly -- now, may I go back?

THE COURT: If you need to in order to cover it, yes.

A. The $8,000 from the certificate of deposit would have to be deducted from the whole amount. You see, I wasn't planning on that 8,000. Okay? Now, 12,000 was about what I was used to living on. Who discussed the amount as I remember, and I could be mistaken on this, but as I remember Mr. Lamula said he could make 10 percent on my investments.

Q. Well, now, you state you were used to living on $12,000 a year.

A. That was before my marriage, my second marriage.

Q. Before your second marriage?

A. Yes, sir.

Q. I see.

Now, before your second marriage -- there was only a short hiatus between your first and second so you were married to Mr. Clark, is that correct?

A. Yes, sir.

Q. And approximately how much per year were you making just before you got divorced from Mr. Clark?

A. This would vary because I picked up money on the side as a consultant, so I would say roughly fourteen to $15,000. It could have been higher. It probably wasn't any less.

Q. Out of that you had to pay the tuition of your sons in college, is that correct?

A. Yes, sir.

Q. Do you know approximately how much of that twelve to $14,000 was left to your own use after paying your sons' education?

A. Very little.

Q. And you do not know how much Mr. Clark was making a year?

A. I do not. He worked on a bonus and I never knew what it was.

Q. So you really did not know how much you were living on?

A. It varied.

MR. BLUM: Wait a minute. There is no question.

Q. Isn't that so?

A. It varied. Everytime my sons needed more money, I went out and got another job. At one time I held four jobs at one time.

Q. You testified you owned some property with Mr. Clark jointly.

A. Yes, sir.

Q. Did Mr. Clark buy that house at one point?

A. Yes, sir.

Q. And he put it in both your names?

A. Yes, sir.

Q. How much did he buy the house for?

A. $14,000.

Q. When?

A. My son was six months old. He is now twenty-eight. Twenty-seven years ago.

Q Did he pay all cash for it?

A. No, sir.

Q. He took out a mortgage?

A. Yes, sir.

Q. And you owned the house jointly with him?

A. Yes, sir.

THE COURT: That's about the third time that question has been asked.

Can't we move on?

MR. GOLDSTEIN: Yes, your Honor.

Q. And you were on the mortgage with him?

A. Yes, sir.

Q. Subsequently you testified that Mr. Grupe bought his share of the house?

A. Yes, sir.

Q. How much did Mr. Grupe pay Mr. Clark for that?

A. $8500.

Q. You testified that before you married, Mr. Grupe assured you he could support you and your children.

A. Yes, sir.

Q. Do you remember at your examination before trial stating that you had to use approximately $500 out of $1,000 savings during your first year of marriage to Mr. Grupe for household expenses?

A. Yes, sir, I do.

Q. Didn't that upset you a little, that you had to use your money for household expenses?

A. No, sir. Mr. Grupe was a very frugal man.

THE COURT: Counsel, I keep hoping that this cross examination is going to get to the issues in this case, but where you are right now I can't see as having any relevance to this case.

Can't we get a little closer to the issues in this case and have a little less to do with the witness' previous marriages and domestic finances?

MR. GOLDSTEIN: Your Honor, all this ties into Mrs. Grupe's case and hopefully it will become clear.

THE COURT: I hope so. This $500 that she spent for family expenses in the first year of her second marriage seems to me to be extremely remote from a purchase she made seven years later.

MR. GOLDSTEIN: Not when you hear the next few questions, your Honor.

THE COURT: All right.

Q. Subsequently you spoke to Mr. Grupe's broker and invested $500 with him, did you not?

A. Yes, sir.

Q. On a stock you had never heard of?

A. That's right.

Q. You just said "Here is $500, I'll take a fling with it"?

A. That's right.

Q. And that was the only $500 you had in the world?

A. No. By that time I had accumulated $1,000 in my retirement fund, so it was 500 of that.

Q. So half of all the money you had in the world?

A. Yes, sir.

Q. Now we come to the end of May 1974. We have gone to the bank with Mr. Lamula and gotten a certified check, I believe, May 29 or May 30.

A. The following day we got the certified check.

Q. And it was for 99 thousand plus dollars?

A. Yes, sir.

Q. Did you ask him why such an odd amount?

A. No, sir.

Q. You didn't question him?

A. No, sir.

Q. This was the only money you had in the world, according to your testimony, is it not?

A. That's right.

Q. You had known Mr. Lamula approximately eight hours of conversations?

A. That's right.

Q. And you gave him a check and didn't ask him what is this? Isn't that so?

A. Yes, I am afraid it is.

Q. Okay.

Now, did you ask Mr. Lamula to send all correspondence to you in Albany?

A. I don't think it was mentioned.

Q. But he knew you were in Albany for the session?

A. Yes, sir.

Q. Did he, in fact, send correspondence to Albany?

A. As I remember, there was one interest check that came to Albany.

Q. I see.

No other mail?

A. There were a few notes there that I got.

Q. And you got the account card in Albany?

A. Yes, sir.

Q. Did you get the confirmations in Albany?

A. No, sir.

Q. Those you did not?

A. No, sir.

Q. Now, you went with Mr. Lamula about May 29 to the bank. I believe yesterday you testified it was about three, maybe four weeks later, you got the confirmations from the first purchase?

A. Yes, sir.

Q. And you just gave them a cursory glance?

A. Yes, sir.

Q. And put them in a drawer?

A. Yes, sir.

Q. Did you know what they were?

A. I assumed they were confirmations, but if I looked at them I didn't understand them.

Q. Okay.

A. They had never been explained to me.

Q. Did you subsequently learn that Mr. Lamula made the purchase on June 3 of 5,000 additional shares of Tech Op.?

A. Yes, sir.

Q. When did you first learn that he made that investment for you?

A. When I received the confirmation in the DeWitt Clinton Hotel.

Q. That he sent to Albany?

A. Yes.

Q When did you get that?

A. I don't recall.

Q. When did you leave Albany?

A. Approximately June 18, but that could be checked.

Q. June 18?

A. Approximately.

Q. Okay.

So when you got the confirmation on the second Tech Op. purchase, you had not yet got the confirmations for the other purchases, isn't that so?

A. As I recall, that is so.

Q. And yet you were very upset when you got this confirmation?

A. Yes, sir.

Q. But you were not upset when you later went home and got this whole envelope full of ten other confirmations?

A. No, sir.

Q. In fact, you just gave those a cursory glance and put them in a drawer?

A. Yes, sir. That's what I had agreed to.

Q. I see.

And this you had not agreed to?

A. No, sir.

Q. You are sure?

A. Yes, sir.

Q. But you didn't even remember the names of the investments he had made for you so how could you be so sure that this you had not authorized?

A. I knew this was extra.

Q. Did you issue a check for this?

A. Yes, I did.

Q. Right away?

A. Quite promptly, yes.

Q. Did you speak to Mr. Lamula about it?

A. Not that I recall.

Q. You didn't mention to him that you were upset?

A. Not to Mr. Lamula.

THE COURT: Did you attempt to call Mr. Lamula?

THE WITNESS: If I -- Judge, I'd have to

hesitate on that because Mr. Lamula was never available on a telephone call.

THE COURT: Did you speak to his secretary?

THE WITNESS: Yes, you could speak to his secretary but he was never available.

THE COURT: Did you speak to his secretary about this additional June purchase of Technical Op.?

THE WITNESS: I am not accurate on that point, Judge.

Q. Subsequently, you went on a trip, I believe.

A. Yes, sir.

Q. To Italy, Rome.

A. Yes, sir.

Q. And you met your nephew at the airport?

A. Yes, sir.

Q. You remember telling him that you had investments of $170,000?

A. Yes, sir.

Q. How did you arrive at that figure?

A. Mr. Lamula told me that's what I had.

Q. I see.

You didn't get it from the confirmations?

A. No, sir. Mr. Lamula told me.

Q. Did he tell you that was the face amount?

A. No, sir.

Q. He didn't.

Now, I call your attention to the time when you came home from Rome.

You found you had made another purchase of Elco, I believe, sometime after that?

A. I found it out, yes.

Q. And you were very upset?

A. Yes.

Q. You stated you had never authorized it?

A. That's true. I did not.

Q. Did you tell Mr. Lamula that?

A. The facts are exactly that I was going to ignore it, and not pay for it, but Minnie Vena called me every single day and asked for the money and finally I said I would not send the money until I could speak to Mr. Lamula, and she said he was in Washington and unavailable, and he called me one hour later and I told him I did not approve of it. I believe this was a Friday. But I did send the check.

He said he knew what I was worth, and that this would be a sound investment for me and to send him the check.

Q. According to the chart which Mr. Blum and I agree is correct, the Elco was bought on June 10, right?

A. Yes.

Q. Now, July 10th of 1974 was on a Wednesday.

When did Mrs. Vena first call you about the money?

A. To the best of my recollection, it would have been on a Monday.

Q. That would have been the 15th?

A. To the best of my recollection.

Q. And what did you say to her at that time?

A. I told her I wanted to speak to Mr. Lamula.

Q. When did you get notice that you had purchased Elco?

A. The date will have to show it. I couldn't tell you exactly.

Q. If it was purchased on a Wednesday, is it fair to say you got it on Friday morning?

A. It was after I returned from Rome, that's all I can tell you for sure.

Q. But it would have to be Thursday if the mail was fast, Friday or Saturday?

A. I can't be more exact.

Q. Did you speak to Mr. Lamula on Monday?

A. No, sir.

Q. That was the 15th. You didn't speak to him?

A. No, sir.

Q. Did you speak to him on the 16th?

A. No, sir.

Q. Did you speak to him on the 17th?

A. I am -- now, I am not going to be bound by the dates. I know there was a week of telephone calls starting on Monday and ending on Friday when I talked to Mr. Lamula. The exact dates I cannot be clear on.

Q. And you were not going to send the check until after you had spoken to Mr. Lamula?

A. That's right.

Q. And you did not send the check until after you had spoken to him?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Can I have the check, please?

A. It's dated before. I intended to send it --

Q. Please, Mrs. Grupe.

A. I am sorry. I apologize to the Court.

Q. This is Plaintiff's 35 in evidence, and it's dated July 16.

A. That's right.

Q. And that was dated several days before you actually mailed it?

A. Yes, sir.

Q. And to the best of your knowledge, you didn't mail it until that Friday, which would have been the 20th?

A. To the best of my knowledge, after talking to Mr. Lamula, I had to send it registered and special.

Q. I see.

A. He had to have it, he said.

Q. Can you read the back as to when this check was deposited, please?

A. July 18.

Q. July 18?

A. Yes, sir.

Q. It was deposited in Mr. Lamula's account in New York City, isn't that correct?

A. That would have been the day --

Q. So that means it would have had to be mailed the 16th, Monday, isn't that correct?

A. It could have been mailed on Saturday.

THE COURT: The 16th was a Tuesday, counselor. You fixed the 15th as being a Monday yourself in your previous questions.

MR. GOLDSTEIN: I stand corrected. You are right.

Q. The 16th was a Tuesday.

A. It could have been mailed Friday afternoon.

Q. Friday afternoon? That would have been the 18th. And it would have reached New York and been deposited in Mr. Lamula's account --

THE COURT: I don't think the 18th was a Friday. I think the 18th was a Thursday.

MR. GOLDSTEIN: I am sorry. Again my arithmetic is off.

Q. The 18th was a Thursday, though.

You testified you did not mail it until at least Friday after you had spoken to Mr. Lamula?

A. I could be mistaken that I spoke to him on Thursday. I could stand corrected on that. I am just trying to recollect to the best of my ability. It was a very upsetting week.

Q. Thursday was the 18th.

That's when you mailed it to him?

A. I told you I can't be more accurate than I am.

Q. But you did mail it to him?

A. Yes, I did.

Q. And this does show it was deposited to a New York account on July 18?

A. All right. Yes, it does.

Q. And still it's your testimony you did not mail it before the 18th?

A. It's not my testimony. My testimony is I don't recollect the day I mailed it.

Q. When you finally spoke to Mr. Lamula you were quite upset, were you not?

A. Yes, sir.

Q. And it's your testimony that -- strike that.

Did you receive the confirmation on Elco prior to July 16?

A. I received the confirmation of Elco in an envelope and that's all I remember receiving.

Q. Would it refresh your recollection if I reminded you you spoke to Minnie Vena on the 15th, which was Monday?

A. I did speak to Minnie Vena.

Q. And by that time you had gotten the Elco confirmation?

A. Yes, sir.

Q. I show you Plaintiff's 34 in evidence, which is a copy of a letter you sent --

THE COURT: Is it dated?

MR. GOLDSTEIN: No, it's undated, your Honor.

Q. -- that you sent to Mr. Lamula. I believe yesterday you testified that that is your signature and you sent him that letter.

A. Yes, sir.

Q. Could you read the last page?

A. "I will have to transfer funds from my savings account for the last purchase. As soon as this is accomplished, I'll send the check to you airmail special."

Q. The last purchase was the Elco purchase?

A. Yes, sir.

Q. Do you remember when you wrote this letter?

A. Not exactly. But I would believe it was after the telephone conversation with Mr. Lamula.

Q. Would the cancellation date in Buffalo help you on the envelope?

A. That says -- I haven't got my reading glasses.

Does that say 16, 17, or 18?

Q. I think it says 16.

MR. BLUM: I think it's 18.

THE COURT: Show it to me. I'll see what I can make of it.

It says 16.

MR. GOLDSTEIN: It says July 16.

MR. BLUM: Your Honor, I honestly question whether it says 16 or 18. But I have no material comment with regard to it.

MR. GOLDSTEIN: It it would help, we have the original envelope.

MR. BLUM: That might help.

I honestly question whether that says 16 or 18, but I don't think it's material.

THE COURT: Let me see it.

(Handed to Court.)

THE COURT: I will tell you what I am going to do, Mr. Blum. I will pass it around to the jury, they are the triers of the fact, and I will let them decide what it says.

MR. BLUM: Very good. That's fine.

THE COURT: Let them look at it, but don't stop while they are looking.

Q Let me read that letter, Plaintiff's 34, Mrs. Grupe, to you.

"Dear John. I am enclosing the signed from Golly, honey, something. My savings is getting pretty low. I am a bit concerned, however. I don't --"

MR. BLUM: Excuse me, your Honor, if I may.

Since she read it yesterday, I think you will see that that word is form. I am enclosing the signed form.

Q All right.

(Continuing.) "Joel, honey, my savings is getting pretty low. I am a bit concerned. However, I know you know what you are doing. But remember, please, I need to live a bit now, not interested too much in leaving an estate. I am sorry you didn't call as you said you would. I do hope nothing is wrong. I do understand how busy you are, but I couldn't help but be worried. Are you all right?

"Didn't have to go to Albany, just as you said. However, in talking to Paul Leyden I was surprised the bank had done nothing about replacing my lost checks. It didn't sound like they intend to, either. I have made arrangements as you suggested to transfer my checking and savings account up here but believe I should wait until I get those canceled checks they lost. Is there any pressure I can put on them?

"Haven't heard from Al. I understand the Governor is dragging his feet in making his appointments and so Perry can't do anything until he does. I'll check with Al first, but if nothing is going on, I think I'll make plans to visit my son and his wife in New Jersey soon. They have been after me but it seems good to be home. It's relaxing here.

"Dorothy, Billy and Shirley and the children seemed to enjoy being here. They really saw the Falls and we all had some wonderful times.

"Good night, dear. Please don't work too hard. Hope to see you sometime soon. My best love, Bea."

Then on the other side a postscript, "Will have to transfer funds," et cetera, which she just read.

Nothing in there makes any mention of your irritation at finding he bought Elco, does it?

A. I believe the first paragraph does.

Q. Where it says that your savings are getting a bit low?

A. Yes, sir.

Q. And you are concerned?

A. Yes, sir.

Q. But you don't say how dare you buy Elco for me?

A. No, sir.

Q. You don't mention that in there?

A. No, sir.

Q. Didn't you yesterday testify that that is exactly what you told Mr. Lamula on the phone Friday, which would be the 19th of July?

A. That would have to be read back to me. I don't think I told him. I told him not to buy anything else. I don't recall saying that.

Q. You don't recall telling him that you were angry at his buying Elco?

A. No, sir, I do not recall that.

Q. So it's possible you never told him?

A. I told him I didn't want him buying anything else.

Q. Now, there came a point after you got back from your trip that you had, I believe, your brother-in-law and sister over for dinner.

A. Yes, sir.

Q. And you had a big conversation and I believe you related, you showed them what bonds you had purchased, isn't that correct?

A. That's correct.

Q. And at a subsequent time you went with your sister down to the library?

A. Yes.

Q. And pulled Standard and Poor's and Moody's at the various listings?

A. Yes.

Q. Do you know what the word subordinated debt means?

A. No, sir.

MR. BLUM: Objection.

THE COURT: Is the question being asked as of the present time or in the past?

Q. At that time, did you know what it meant?

A. It wouldn't make any difference. I don't know now.

Q. From reading Standard and Poor's, did you know what the word debenture meant?

A. No, sir.

Q. Did you know what the words convertible debenture meant?

A. I remember reading for the first time the fact that you could convert bonds into stocks. That's the first time I had ever seen that.

THE COURT: When was this first time?

THE WITNESS: In the library.

THE COURT: When you were reading Standard and Poor's and Moody's?

THE WITNESS: Moody's, yes, sir.

THE COURT: All right.

Q. As you were reading through each company, did you find some companies weren't mentioned?

A. Yes, sir.

Q. That were unrated?

A. As I remember I did.

Q. And the others you found were B, triple C, et cetera?

A. Yes, sir.

Q. Going back to your vocation as a school teacher, an A is an excellent mark, is it not?

A. Yes.

Q. And a B is good but not an A?

A. That's right.

Q. And a C is about average?

A. Yes.

Q. Now, when you saw, for instance, that Inflight Services was rated B, you got very upset, did you not?

A. Yes, sir.

Q. When you were reviewing Inflight Services, did you read the whole statement about Inflight in Standard and Poor's and Moody's?

A. Probably not.

Q. Did you read the financial section?

A. What do you mean by the "financial section"?

Q. Well, did they give some finances, figures, showing what their capitalization was, what their assets were, what their debt liability was?

A. Probably.

Q. Did you read it?

A. Not with understanding very much.

Q. They were just figures, is that correct?

A. My specialty as a reading consultant would be in the written material and not in the figures.

Q. Mrs. Grupe, please, that doesn't answer the question.

They were just figures to you?

A. That's the only way I can answer.

Q. You did not understand them?

A. No.

Q. Did you understand most of what you were reading?

A. Some of it.

Q. Some. Okay. Now, based upon -- strike that.

As you will note from the chart, Moody's and Standard and Poor's doesn't have the same ratings for some of the bonds.

A. I have noticed, yes.

Q. But, yet, you only photostated Moody's?

A. That's right.

Q. You didn't photostat Standard and Poor's?

A. No, sir.

Q. Armed with these photostats you went back to your house?

A. Yes, sir.

THE COURT: Incidentally, I hate to confess it, but I don't know whether a triple C is better than an A. Can you gentlemen stipulate as to that. Is triple C better than C.

MR. GOLDSTEIN: Yes.

MR. BLUM: It is, your Honor, and I might add, when the expert testimony appears you will find out how far it is from a B and C.

THE COURT: Is triple C the next rating below B?

MR. BLUM: That's the seventh-grade bond. Yes.

THE COURT: They didn't have triple C's when I was in school. That was the shoe size.

MR. BLUM: Moody's doesn't have them.

THE COURT: The two systems are not identical?

MR. BLUM: No, but it's a seventh-grade bond in either one if it's a CCC.

THE COURT: All right.

Q. You testified in reading some of the information from either Standard and Poor's or Moody's that one of the companies was in trouble with the SEC?

A. Yes, sir.

Q. What does SEC stand for?

A. The Securities and Exchange Commission.

Q. What is their function as you understand it?

MR. BLUM: Again, your Honor, I object.

Q. As you understood it then. As you understood it then.

A. That it rode herd on honest companies, that it kept companies honest.

Q. And that was your sole understanding?

A. Yes, sir.

Q. I see.

A. That it was a Federal Commission.

Q. A Federal agent?

A. Yes.

Q. Getting back to where we were before we digressed a little, you went home with all these documents in a worried state, isn't that so?

A. Yes, sir.

Q. And you immediately decided to go to New York?

A. Yes, sir.

Q. You didn't call Mr. Lamula?

A. No, sir.

Q. You didn't call your son who was an attorney?

A. No, sir.

Q. All you did was call your nephew and say, "I'm coming"?

A. Yes, sir.

Q. You didn't ask anybody to explain what you had just read?

A. I knew all I needed to know then. No, I did not ask anybody to explain it that I recall.

Q. You just testified you only knew -- you only understood some of what you read.

A. That's right.

Q. Yet you knew enough to know to go to New York?

A. Yes, sir.

Q. You didn't need anybody else to tell you anything more?

A. No, sir.

Q. Okay.

A. If I discussed it --

Q. Now, at that time did you have a great surplus of money for your own needs?

A. I cannot recall but I would say no, not a great surplus.

Q. Yet you decided to take a plane to New York and register in the Hilton Hotel in New York?

A. Yes, sir.

Q. Now, you came to New York, checked into the Hilton, deposited your bonds in the Hilton safe, is that right?

A. That's right.

Q. And then you called your nephew and met with him?

A. Yes, sir.

Q. And then sometime after that you called Mr. Lamula?

A. Yes, sir.

Q. And you told him you were en route to New Jersey to see your son?

A. Yes, sir.

Q. You lied to him?

A. That's the only way he would have answered the phone.

Q. Did you tell Minnie Vena you were on the way to New Jersey and you wanted to speak to John?

A. No, sir, I don't think I did.

Q. Well, who answered the phone?

A. Probably Minnie Vena.

Q. What did you tell her?

A. That I wanted to speak to John.

Q. You didn't tell her why?

A. No, not that I remember.

Q. And she put John on the phone?

A. Not that I remember.

Q. And she put John on the phone?

A. Remember, I was in New York.

Q. I realize that, but she put him on the phone?

A. Yes.

Q. What was the reason of telling him this story? You had him on the phone. Couldn't you have told him the truth?

A. No, sir.

Q. Why not?

A. He would have avoided the issue.

Q. He would have avoided the issue?

A. Yes, sir.

Q. But later on when you confronted him with this fact, he didn't avoid the issue, did he?

A. I would say he tried to.

Q. But he met with you and stayed up all night with his brother showing you that you were wrong, isn't that so?

A. I don't know that.

Q. But that's what he told you?

A. Yes, sir.

Q. And he came the next day after the night before?

A. Yes, sir.

Q. With a whole sheet of paper and everything?

A. Yes, sir.

Q. So he didn't avoid the issue?

A. May I make a statement?

THE COURT: No, your attorney will have a chance to elicit additional matter.

MR. BLUM: I didn't think there was a question in any event, your Honor.

THE COURT: I would say it was a rhetorical question.

Q. Now, there came a point where you changed hotels, was there not?

A. Yes, sir.

Q. And you went to the -- what hotel did you go to, the Westbury?

A. The Westbury.

Q. Why did you change hotels?

A. Because Mr. Lamula was calling me and I did not want to talk to Mr. Lamula unless I initiated the conversation.

Q. Well, a minute ago you said Mr. Lamula was avoiding you and wouldn't face the issue if you had told him the truth about why you were in New York.

A. This is previous to my trip to New York, sir, that I was referring to.

Q. No, you stated --

A. You misunderstood.

Q. You stated when you were in New York you called Mr. Lamula and said you were en route to New Jersey.

A. Yes, sir.

Q. When you were in New York?

A. Yes, sir.

Q. And the reason for doing that, you stated, incidentally, and correct me if I am wrong, is that if you told him the truth, he would have ducked the issue.

A. I was afraid of that, yes.

Q. Now you are telling us a couple of days later you want to avoid Mr. Lamula?

A. That's right.

Q. I see.

On August 5, -- let me just check the date to be sure.

Now, on August 5 you went down to L.F. Rothschild again, did you not?

A. Again?

Q. Well, you had been there about a year before, had you not?

A. Yes, sir.

Q. At that time you had politely walked out on the man who was talking to you and left, is that so?

A. I left, yes.

Q. And now Monday, August 5, finds you back at that same office.

A. Yes, sir.

Q. And who did you go to see?

A. Robert Loeb.

Q. Had you ever spoken to him before?

A. No, sir.

Q. Had you ever met him before?

A. No, sir.

Q. You sat down in his office at about what time?

A. Approximately 11 o'clock.

Q. I see.

A. It could have been earlier.

Q. What did you tell him?

A. I told him I wanted these bonds sold.

Q. At once?

A. Sorry?

Q. At once?

A. I don't remember that term was used.

Q. Did you tell him to sell --

A. It could have been.

Q. Did you tell him to sell it for whatever he could get?

A. The conversation didn't last over a minute.

Q. Did you tell him to sell it for whatever he could get?

A. I told him to sell those bonds, and that's what I remember I said, and that's all I said.

Q. Well, I refer to your deposition on Page 155, Line 24, question by Mr. Blum.

"Q. Did you give him any instructions with regard to those securities?

"A. Yes.

"Q. What were your instructions?

"A. Get rid of every one of them for whatever you can gèt."

Does that refresh your recollection as to what you told Mr. Loeb?

A. I could have been.

Q. And what was Mr. Loeb's response?

A. "It looks like you are really in trouble."

Q You were there for one minute and he tells you it looks like you are really in trouble, is that right?

A. I didn't time it, sir. But it was a short, a very short conversation.

Q You had the bonds with you?

A. Yes, sir.

Q. And you gave them to him?

A. Yes, sir.

Q. And he looked them over?

A. No, sir, I don't think he did.

Q. At any time during this first meeting, did he ask you to sign anything?

A. Yes, sir.

Q. What did he ask you to sign?

A. A receipt for the bonds and also the other thing I remember was an account number with his company.

Q Did he also ask you to sign something to authorize him to sell the bonds?

A. Well, isn't that what I just referred to?

Q. No, you said a receipt. And an account card. Is that what you interpret that as, authorization? If that is your interpretation, fine.

A. It would be my interpretation.

Q All right, fine.

Did he ask you what your finances were?

A. No, sir.

Q. Did he ask you what your assets were?

A. No, sir.

Q. Did he ask you if you had any savings outside of these bonds?

A. No, sir. He knew.

Q. He knew what?

A. All the answers to those questions.

Q. Did he say he knew?

A. I knew he knew.

Q. Did he say he knew?

A. The question was not asked.

THE COURT: If he didn't say he knew, how did you know he knew?

THE WITNESS: Because he had been conversing with my nephew William Morris.

THE COURT: Thank you.

Q. Now, did he ask you to sign a power of attorney?

A. No, sir.

Q. Had you, in fact, signed one for your nephew?

A. Yes, sir.

Q. So your nephew had a power of attorney to transact business for you?

A. Yes, sir.

Q. And you had given this to him prior to going to Mr. Loeb?

A. Yes. It would have had to have been, yes. I don't remember the exact date.

Q. Do you remember if he had it before you went to Mr. Loeb?

A. I remember signing papers. You would have to check the dates on them.

Q. Well, the confirmations that are in evidence show they were sent to Mid-Atlantic Consultants, which I believe you testified was your nephew's firm.

Does that refresh your recollection as to when the power of attorney was signed?

A. To the best of my recollection, it was signed before.

Q. Before?

A. To the best of my recollection.

Q. And as you understand it, that power of attorney gave your nephew the power to buy and sell securities for you?

A. Yes, sir.

Q. You testified Mr. Loeb knew all about your past history, your nephew had the power of attorney.

Why did you go to Mr. Loeb's office? Your presence wasn't needed there, was it?

A. I had to go there to sell the bonds.

Q. But your nephew had the power of attorney. He could have sold it, couldn't he have?

A. That wasn't the way he wanted to do it.

Q. I see.

A. It was my business.

Q. But yet he wanted a power of attorney from you?

A. He had it.

MR. BLUM: Who is the "he" that you are referring to?

MR. GOLDSTEIN: Mr. Morris.

A. He had to have it.

Q. He had to have it?

A. Sure.

Q. That's what he told you?

A. That's what I wanted.

Q. Whose suggestion was it that you give him a power of attorney?

A. I believe that's a legal question and that he wouldn't have the authority to do it without the power of attorney.

Q. He wouldn't have the power to do what?

A. Sell my bonds and buy bonds --- sell my holdings.

Q. Did Mr. Lamula have a power of attorney?

A. No, sir.

Q. But he bought you bonds, did he not?

A. Yes, sir.

Q. And you asked him to sell the bonds, did you not?

A. Yes, sir.

Q Did you expect to give Mr. Lamula power of attorney to sell your bonds?

A. No, I expected to give him a commission.

Q. I see.

Were you told by anybody that you had to give Mr. Morris a power of attorney in order for you to sell your bonds?

A. I believe he told me.

Q. Who, Mr. Morris?

A. Yes.

Q. I see.

Is that power of attorney still in existence?

A. As far as I know.

Q. And it authorizes your nephew to buy and sell securities on his say-so for your account?

A. Yes.

Q Through Mr. Loeb?

A Yes.

Q And Mr. Loeb is aware of this?

A. Yes.

Q Did you ever give such a power of attorney to Mr. Loeb or L.F. Rothschild?

A. No, sir.

Q Subsequently using this power of attorney, were certain securities purchased for you by L.F. Rothschild?

MR. BLUM: Your Honor, I object to this question.

THE COURT: What is the relevance?

MR. GOLDSTEIN: The relevance is we claim that Mrs. Grupe for one reason or another purposely dumped these bonds. We further intend showing that she was not alone in her desire to dump these, that there were other people interested in having her sell these bonds quickly so that they could put her into other securities and earn commissions and perhaps start churning her account.

And I think there is great relevance as to what happened with this money afterwards to show her state of mind. She said she was afraid to buy those bonds, but I want to show she went into stocks that she was deathly afraid of after this purchase, after these sales.

I think that is very relevant.

THE COURT: All right, but let's not get down to the specifics of the trading, merely the generalities that the -- that after the bonds were sold, purchases were made on her behalf.

MR. BLUM: May I be heard on this for a moment, your Honor?

THE COURT: I don't think so.

MR. BLUM: May I approach the bench on it, your Honor?

THE COURT: No. I have already ruled on it.

MR. BLUM: There has been no discussion of this issue before my colleague just addressed you on this question, which is a different question from the one that we spoke about in the robing room.

THE COURT: It seems to me to be identical.

MR. BLUM: Quite different, your Honor, because the question raised there which was what happened to the values of these debentures at subsequent times is a different question from what happened -- from what investment decisions were made subsequent to that date.

If the lady has testified, as she has testified, that she turned that discretion over to someone else, then I can't see any relevance, certainly it doesn't relate to the damages and it doesn't relate to investment decision.

THE COURT: I have already said we are not going to allow defendants' counsel to go into the specifics of all the transactions that may have taken place thereafter when her nephew held a discretionary power to buy and sell, but I will allow him to establish that the nephew exercised the discretionary power to purchase stocks, which I take it is what occurred.

MR. GOLDSTEIN: Yes, your Honor.

MR. BLUM: Again I note my objection to that.

I think what was bought subsequently by the nephew given the discretion is entirely different from what was authorized by the lady in her state of mind in the spring of 1974.

THE COURT: Perhaps, but states of minds are not constant things. They change, but they tend to run a course. Consequently, what she might do in July or August can have some bearing on what she might have done in May.

Let's get to the heart of this. When you gave your nephew a discretionary account he then made purchases with the money he received, or rather the money you were credited with by the sale of your debentures?

THE WITNESS: Yes, sir.

THE COURT: And to your knowledge, were these purchases common stocks?

THE WITNESS: I couldn't tell you for sure. I remember, one word I remember was Fannie Mae.

Isn't that a bond?

THE COURT: No, Fannie Mae is a Federal mortgage --

THE WITNESS: I remember because of the word.

MR. BLUM: It's a Federal agent which issues bonds and notes, your Honor.

THE COURT: And to your knowledge he invested in the Federal mortgage agent?

THE WITNESS: If that's Fannie Mae, yes, sir.

Q. Do you know if he also invested in stocks?

A. Yes, I think he did.

Q. Isn't it a fact that subsequently he or Mr. Loeb requested that you invest an additional $10,000 into your trading account?

MR. BLUM: I object.

THE COURT: This occurred within a period of a month or two thereafter?

MR. GOLDSTEIN: Yes.

THE WITNESS: Do I answer that?

THE COURT: Yes.

A. That isn't clear in my mind but it's possible that it happened. That's the best I can say.

Q I will read from Page 401 of your testimony, Line 22, where Mr. Blum asked the question:

"Q Did you put any fresh money into this account?

"A. I think --"

MR. BLUM: Objection, your Honor.

I am going to object to that question on the ground, although I asked it as the Court knows the latitude in a deposition is entirely different from a trial and your Honor specifically limited the time frame of whether or not she put fresh money in to a month or two following.

MR. GOLDSTEIN: The witness testified she cannot recall. I am seeking to refresh her recollection as Mr. Blum has done on her direct testimony.

MR. BLUM: I don't think he can refresh by asking an irrelevant question. What she did later is an entirely different subject.

THE COURT: It's not clear from the deposition what time we are speaking of. It just says subsequent. It would appear from the next page that it means prior to August 6, but it's not clear.

MR. BLUM: No, I think on the next page it says would you remember when and she says no.

THE COURT: The next question is on August 6 you went home.

MR. BLUM: That's the beginning of a new subject. On August 6 you went home and spoke to Miss Emerson, et cetera.

THE COURT: What is your best recollection as to when you put fresh money into the account? In other words, money in addition to the money that was realized by the sale of your debentures. How long thereafter?

THE WITNESS: Sir, I can't honestly remember.

THE COURT: Give us your best approximation. One month, two months?

THE WITNESS: It would have had to have been at least a couple of months because I didn't have that kind of money.

THE COURT: What is the pending question?

MR. GOLDSTEIN: I wanted to read Mr. Blum's question and the answer in the deposition.

THE COURT: It's apparent she did invest fresh money later on, she is not sure when. Go on from there.

MR. GOLDSTEIN: Can I read that to refresh her recollection?

THE COURT: Her recollection is she doesn't remember when.

MR. GOLDSTEIN: The amount might refresh her recollection.

THE COURT: I think you have established $10,000, haven't you?

MR. GOLDSTEIN: I will withdraw that line, your Honor.

Q. Do you know what a discretionary account means at this time?

MR. BLUM: If it's asking at this time, I don't think it's a terribly relevant question.

MR. GOLDSTEIN: I will withdraw the question.

MR. BLUM: If it's asked at that time, the question should be what did it mean to her.

Q. At that time you gave the discretionary account power of attorney to your nephew, did you know what a discretionary account was?

A. I knew what I was giving my nephew.

Q. Did you know what it was?

A. Yes, sir.

Q. Did he explain it to you?

A. Yes, sir. In detail.

Q. What did he say it was?

A. I was giving him the power of authority to buy and sell and control and take care of my investments.

Q. How old was your nephew at that time?

A. Twenty-nine.

Q. I see.

When did you first learn he was in the securities business?

A. It would have been in approximately May of that year. Of the same year.

Q. May of 1974?

A. Yes, sir.

Q. Did you tell him that you did not want to invest in stocks?

A. No, sir.

Q. Did you tell Mr. Loeb you did not want to invest in stocks?

A. No, sir.

Q. You just told him you wanted him to get rid of the bonds?

A. And reinvest my money.

Q. You didn't tell them in what?

A. No, sir.

Q. Did they discuss with you possible reinvestments?

A. They discussed only to the point that they would only be Grade A.

Q Grade A.

A. That they would be good stock or bond.

Q. But they used the word stock?

A. That I don't recall. They could have.

Q. Let me see if I can refresh your recollection, beginning on Page 389, question commencing on Line 10.

"Q Previously you testified that way back in December or January your impression of a brokerage house was a place where you invested in stocks. Was that still your impression in July of 1974, in August of 1974?

"A. My answer would be that when my nephew sent me there, to L.F. Rothschild, it must have come to my realization that they took all kinds of investments. The reason there was a question in my mind is because I know my husband had a different man whom he invested bonds with than he did stocks.

"Q. Did you tell Mr. Loeb what kind of income you required?

"MR. BLUM: What amount of income. What amount of income you required.

"A. No, sir.

"Q. Did Mr. Loeb give you some idea as to what securities he would be looking at for -- and then there was an interruption --

"A. Only to the extent that they would be quality bonds.

"Q. What did he mean by quality?"

There was objection to the question. I repeated the question.

"Q What did he tell you he meant by quality?

"MR. BLUM: If he in fact said that.

"A. The quality bonds I do remember.

"MR. BLUM: Let me ask this question. I object to the form of the question unless you ask what Mr. Loeb told her what he meant by quality bonds."

THE COURT: Come on, counselor, please go somewhere with this. Don't read all this dialogue between the attorneys.

"Q. Did Mr. Loeb tell you what he meant by quality bonds?

"A. Yes.

"Q. What did he say?

"A. Triple A rating.

"Q. Nothing below Triple A rating?

"A. I believe it was discussed that they would be high quality and also I do remember discussion with my nephew William, they wanted to put me in United States Government bonds because of the safety of the investments."

Q. Now, does that refresh your recollection as to what Mr. Loeb discussed with you as to possible investments?

MR. BLUM: Something has been left out across the next four or five lines which I think it's appropriate to read because it's part of the same colloquy.

MR. GOLDSTEIN: I think Mr. Blum can read whatever he wants on redirect.

THE COURT: Overruled.

Does this refresh your recollection as to your discussion with -- it says Mr. Loeb, L-o-e-b in here. I understood her earlier to say Mr. Low.

MR. BLUM: No, it's Mr. Loeb, your Honor.

THE WITNESS: Judge, to answer your question, there was so much discussion with my nephew that what I said to Mr. Loeb and what I said to my nephew could be confusing in my mind.

THE COURT: All right, it does not refresh your recollection.

Move on.

Q. You do not remember telling your nephew or Mr. Loeb that your goal was to have a certain income per year?

A. No, sir, I do not.

Q Did you receive the interest payments on the bonds Mr. Lamula put you into as and when they were due?

A. Yes, sir.

Q Right on the day?

A. I remember receiving three.

Q And those were the only three you were entitled to?

A. Yes, sir.

Q You were quite concerned about the money Mr. Lamula had invested for you, isn't that correct?

A. Yes, sir.

Q This was most of your savings, isn't that so?

A. Yes, sir.

Q And at one time you trusted Mr. Lamula very highly, did you not?

A. Yes. For a period of time.

Q And he made investments for you?

A. Yes, sir.

Q Did you trust your nephew more than you trusted Mr. Lamula in August of 1974?

A. Yes, sir.

Q You trusted your nephew quite a bit, didn't you?

A. Yes, sir.

Q Enough to give him discretion over your account?

A. Yes, sir.

Q. And let him do whatever he thought best in your account?

A. Yes, sir.

Q. Without advising you?

A. He discussed things with me.

Q. But you weren't sure at any given time what investments you held?

A. I knew he was consulting with Mr. Loeb.

Q. From the investments that they made for you, were you getting $12,000 a year in income?

A. No, sir.

Q. Do you know approximately how much income you were getting in the form of dividends or interest payments?

A. Not exactly, no, sir, I don't.

Q. Do you have some idea?

A. No, but it's a matter of record. You could find out.

Q. It was much lower than $12,000?

A. Yes, sir.

Q. Was it lower than $5,000?

A. It could be.

THE COURT: You have to remember, counsel, she started out with less than $70,000 this time.

MR. GOLDSTEIN: That's true, your Honor. I have no further questions.

THE COURT: Redirect?

MR. BLUM: Oh, yes, your Honor.

THE COURT: I was hoping you would say no.

MR. BLUM: I was hoping I would be able to, your Honor.

Do you want me to commence now?

THE COURT: Yes.

You see, the reason I didn't think redirect would be particularly necessary is because a good deal of cross examination merely went back over what you established yesterday so that if you intend to go over it for a third time, I am not going to let you.

MR. BLUM: Let me give you a positive assurance I will not, your Honor, but I believe there were some doors opened in the course of the testimony given and the questions that were asked and I would like to peek inside of them.

REDIRECT EXAMINATION

BY MR. BLUM:

Q. Now, at one point in your cross examination, Mrs. Grupe, Mr. Goldstein asked you what Mr. Loeb said to you, and as I jotted it down the words were, "It looks like you are really in trouble."

Was that approximately what he said?

A. Yes, sir.

Q What did you understand him to mean when he said that?

A. I knew I had discussed the stocks with, or the bonds with my nephew and they had agreed that they were no suitable investments for me.

Q How did you know they had talked with each other about it?

A. They had conversations while I was in the office of my nephew.

Q What did your nephew tell you that he and Mr. Loeb had determined with regard to these bonds?

A. That they would get suitable high-quality investments for me.

Q. What did they say that they had determined with regard to those securities when you asked them about it?

MR. GOLDSTEIN: Objection.

I am not sure who she is talking about.

THE COURT: That question puzzles me, too.

Q More specifically, when you came to New York to talk to Mr. Morris, did you have discussion with him about the quality of the debentures which had been bought for you by Mr. Lamulá?

A. Oh, yes.

Q. What did he tell you about the debentures that had been bought for you by Mr. Lamula?

MR. GOLDSTEIN: I will object to that. It's hearsay.

MR. BLUM: I respectfully submit that door has been opened wide. The question as what discussions took place, and why people thought things, and what she did. Again, I repeat, he has put in issue her reasons for doing things and having asked those questions, I think the jury should hear the answers.

THE COURT: Once he went into what Mr. Loeb's statements were, you are entitled to ask everything said at that time.

MR. GOLDSTEIN: Not by Mr. Morris.

MR. BLUM: There were also questions as to discussions between Mr. Loeb and Mr. Morris.

THE COURT: I don't think he asked it, I did.

MR. BLUM: If your Honor opened the door, then --

THE COURT: I just closed the door I opened.

We are confined to Mr. Loeb and what Mr. Loeb said in a conversation which she told us took no more than one minute.

Q. What did Mr. Loeb say to you about these bonds?

A. He said I was in trouble with these investments.

Q. What was it you understood that he meant when he told you you were in trouble with those investments?

A. That they were most unsuitable and they were junk bonds.

Q. At an earlier point in the cross examination Mr. Goldstein asked you a question relating to your return from the public library in which he said, and I jotted the question down, you didn't ask anybody to explain this information to you? Your answer was, I believe, "No."

Now, I ask you, why didn't you ask anybody to explain to you the information that you had obtained in the public library? Was there something you already knew or believed?

MR. GOLDSTEIN: Counsel is leading the witness.

THE COURT: Yes, he is, and also the form of the questions are improper.

The objection is sustained.

Q. Then I will ask why didn't you ask anybody to explain this information to you?

A. I had learned all I needed to know.

Q. Where did you learn it?

A. From what I had read.

Q. Was there any other place that you learned anything about those bonds before? Was there any other place you learned anything about those bonds before you went to the library?

A. Yes.

MR. GOLDSTEIN: I object, again.

The question was asked and answered and counsel is once again leading the witness and suggesting answers to her.

THE COURT: He is attempting to refresh her recollection. He has now apparently done so, so we will now hear the answer.

What was your other source of information?

A. My brother-in-law and my nephew, and my sister.

Q. What did they tell you, if anything?

MR. GOLDSTEIN: Objection.

THE COURT: Sustained.

Q. There was one point where Mr. Goldstein read to you a piece of the previous -- your testimony in the deposition, and I think he stopped a little short of a full reading of the answers that you gave on the subject. Let me read them to you and see if they refresh your recollection as to the conversation that you had with Mr. Loeb. Page 391, Line 3.

"Q. Was the only definition given to you by Mr. Loeb of high-quality bonds Triple A?

"A. I don't think so.

"Q. Did he mention a lower rating?

"A. I do not remember that Mr. Loeb mentioned anything but quality bonds.

"Q. Did he say what he meant by quality bonds?

"A. No. My nephew had already explained it to me."

Does that refresh your recollection as to what took place in your brief conversation with Mr. Loeb?

A. Yes.

Q. Is that an accurate report of your recollection?

A. Yes.

Q. And as refreshed, is that your recollection now?

A. Yes, sir.

Q. Mr. Goldstein referred in his cross examination to Mr. Lamula arriving at the hotel, having been up the night before, with a statement.

Did he, in fact, arrive with any piece of paper or a statement?

A. Yes, he did.

Q. I show you Plaintiff's Exhibit 41, already marked in evidence, and ask you if you can identify that document.

A. Yes, sir, that's it.

Q. That's the statement he gave you at the time?

A. Yes, sir.

Q. What did he say to you, if anything, about this statement?

A. To the best of my recollection, it was just left in my hotel room. It was not gone over.

MR. BLUM: May I offer it to the jury, your Honor?

THE COURT: Yes.

(Exhibit handed to the jury.)

Q. When you say he didn't go over it, did he tell you what it was, did he say it was a piece of paper or did he describe it in some way?

A. I knew what it was.

Q. What did you understand it to be?

A. The list of my securities.

Q. Did he make any comment of any kind on it at the time other than here is something? Did he tell you how it was prepared, for example?

A. Only to the extent he and his brother had stayed up all night preparing it.

Q. Prior to that date, had you received anything that you regarded as a statement from -- of your securitie transactions from John Lamula Investors?

A. Yes.

Q. What did you receive that you regarded as a statement from them?

A. Similar lists with interest and due dates. There are several of them.

Q. Are you referring to this one, and copies of - I am referring to Plaintiff's 20?

A. Yes, that type of thing.

Q. And other copies of Plaintiff's 20, is that correct?

Q. Yes, that's correct.

Q. Do you recall ever receiving what you regarded as a statement of your account that wasn't a handwritten job like these two?

A. I don't recall. Well, wait, yes, there was a typewritten one.

Q. Was that a bill or a statement?

A. I believe it was included with a bill.

THE COURT: How much longer are you going to be, Mr. Blum?

MR. BLUM: Ten or fifteen minutes, your Honor, tops, but it will be that long.

THE COURT: All right, we will recess for lunch now.

I would like to see the attorneys in the robing room, and the jury will have an hour for lunch. Don't discuss the case.

We will resume at 2:10.

(Luncheon recess.)

AFTERNOON SESSION

2:10 p.m.

(In open court, jury present.)

THE COURT: The witness will resume the stand.

BERNICE C. GRUPE, resumed.

REDIRECT EXAMINATION CONTINUED

BY MR. BLUM:

MR. BLUM: Your Honor, perhaps I should comment that for the purposes of the read-in I referred to earlier, I have asked my associate, an associate of our firm, Miss Judy Bluestein, to join us and she will be at the counsel table this afternoon.

Q. Mrs. Grupe, with regard to the summer of 1974, which was the time when this Elco stock purchase was made, what happened to your employment, your position as a session employee?

A. It had ended.

Q. Did you have a salary or wage at that time?

A. Just my retirement from my New York Teachers.

Q. When did you find employment next after that?

A. After the election when Mr. Hausbeck was defeated, then Mr. Anderson asked me to come back on his staff.

Q. Once again with respect to this Elco transaction, I want to be clear about one thing.

You testified earlier that you did not have any communication or correspondence with Mr. Lamula with regard to this Elco transaction before you received word of it through the mail, is that correct, before you got word that it had been bought?

A. That's right.

Q. I show you this letter which is Plaintiff's 32 for identification and ask you if you have seen that before at any time.

A. Yes, sir.

MR. BLUM: In evidence?

Q. Let me read this letter to you. It's dated July 10, 1974. It's on the letterhead of John Lamula Investors, Inc. and it's addressed to you at your home in Williamsville and it says:

"Dear Bea. As per conversation, the Elco debentures are worth holding. The company is merging soon which will make the debentures even safer since the assets of two companies would be behind the debentures. Your check will be due on July 17, but it is okay if we receive same by the 19th."

Did you receive that letter on or shortly following July 10?

A. No, sir.

Q. When was the first time that you saw this letter?

A. The first time I saw this letter was in your office when you showed it to me.

Q. When was that?

A. When I came for my deposition.

THE COURT: Is 32 in evidence?

MR. BLUM: Yes.

MR. GOLDSTEIN: Yes.

xxx (Plaintiff's Exhibit 32 received in evidence.)

Q. Returning to this statement that was referred to which was handed to you, I direct your attention to an item which appears on it -- I will read it out. It's June 28. 1,000 Seaboard Coast Line, Price 25, Debits 25,000. And then over on the right-hand side there is an entry July 2, 1,000 Seaboard Coast Line CXL, 25 and the numbers 25,000.

MR. GOLDSTEIN: Your Honor, we are now on redirect. Therefore, Mr. Blum is limited to what I covered in my cross and I did not mention anything about this particular issue and, therefore, I think it's improper for Mr. Blum to raise it at this point.

THE COURT: You are going well beyond the scope of cross examination.

MR. BLUM: There was reference to the preparation of the statement, your Honor, and reference also to the discussions which followed when Mr. Lamula came to her room.

THE COURT: I don't remember anything about Seaboard.

MR. BLUM: That's precisely the question I want to ask, your Honor.

THE COURT: All right.

Q. Did Mr. Lamula tell you anything about Seaboard?

A. No, sir.

MR. GOLDSTEIN: At what point?

Q. At that time.

A. At any time.

Q. Did you look at the statement at some time?

A. Yes, sir.

Q. I think you were asked that question.

Was that while Mr. Lamula was in the hotel room with you?

A. No, sir.

Q. And at the subsequent time that you looked at it and saw it, when was that?

A. That would have been approximately on Friday afternoon in the Westbury Hotel.

Q. Did you understand what it meant?

A. No, sir.

Q. Did you show it to anyone?

A. Yes, sir.

Q. Whom did you show it to?

A. My nephew, Mr. Morris.

Q. After you showed it to him, did you have any understanding what that meant?

A. He explained to me that it was --

MR. GOLDSTEIN: Objection.

Q. Did you have an understanding what it meant after he showed it to you, after you asked him about it, did you have an understanding as to what it meant?

A. Well, correct me if I'm wrong, but I understood it was stock. I don't know what kind of an answer you want.

Q. I want to know -- my question could be answered with a yes or no.

Did you have an understanding?

A. Yes, sir.

Q. What was the understanding you had with regard to this entry after that discussion?

A. That it was bought without my permission.

THE COURT: May I see the exhibit, please?

MR. BLUM: Yes.

(Handing.)

THE COURT: This is partly illegible.

MR. BLUM: Yes, sir. That's the original, however. It came in that form and I gather some water was spilled on it at some time by the plaintiff. We have a cleaner copy of it somewhere, if counsel has no objection to my digging it out. I think we used the cleaner one in the deposition, as a matter of fact.

MR. GOLDSTEIN: I think so.

MR. BLUM: Here, your Honor, if we can have it marked, then, perhaps as -- what is that, 41?

THE COURT: This is 41. It says for identification. It doesn't say in evidence.

MR. BLUM: There is no question. Let's have this one marked 41-A in evidence then.

THE COURT: All right.

xxx (Plaintiff's Exhibit 41-A received in evidence.)

THE COURT: Are you attempting to establish that this last entry, which is Seaboard -- actually last typewritten entry are not debentures at all but are stocks?

MR. BLUM: Oh, yes, sir. I don't think there is any question about that.

THE COURT: I can't tell what they are supposed to be from this.

MR. BLUM: I think that was the state of plaintiff's understanding at the time she saw it, too.

THE COURT: They apparently were purchas June 28 and there has been no prior testimony about it that I can recall.

MR. BLUM: That's correct.

THE COURT: All right, continue. I'll gi you both of them.

MR. BLUM: I have no further questions.

MR. GOLDSTEIN: Your Honor, I have a coupl of redirect just on this one point.

THE COURT: Recross.

MR. GOLDSTEIN: Recross, I am sorry.

THE COURT: It may just sound like redirect

RECROSS EXAMINATION

BY MR. GOLDSTEIN:

Q. Mrs. Grupe, did you ever give Mr. Lamula a check for Seaboard?

A. No, sir.

Q. Did he ever ask you for a check for Seaboard?

A. No, sir.

MR. GOLDSTEIN: No further questions.

THE COURT: That clarifies it, doesn't it. You are excused.

(Witness excused.)

MR. BLUM: May we approach the bench, your Honor, off the record?

THE COURT: All right.

(Discussion at the side bar off the record.)

THE COURT: Ladies and gentlemen, you are now going to hear parts of a deposition. A deposition is sworn testimony taken of a witness at an earlier time and when the witness is unavailable, the deposition may be read in place of the actual appearance of the witness.

The person who will be on the stand will not be Miss Emerson but as you heard, somebody from Mr. Blum's law office but she will respond giving the answers that Miss Emerson gave while Mr. Blum reads the question that he asked and perhaps some questions that his adversary asked also.

Sit right up here on the witness stand.

MR. BLUM: Your Honor, I don't have the original transcript. I believe my opponent has the original. If the Court would, for the convenience of the Court, perhaps I can hand your Honor a schedule on the read-in.

THE COURT: Thank you.

"Q. Now, Miss Emerson, in early 1974, January and February, were you living primarily in Albany?

"A. Yes. I kept an apartment there the year-around and I was staying in that apartment as soon as the Legislature opened and I stayed there and I closed my house in Cayuga until the Legislature was over."

MR. GOLDSTEIN: Your Honor, I think for clarity, Mr. Blum should state who is asking the questions at different times since he and I took turns deposing the witness.

THE COURT: Let us leave it this way. It will be his questions unless he indicates that they are yours.

MR. BLUM: These questions were by Mr. Goldstein.

THE COURT: These questions are by Mr. Goldstein. Would you continue, please.

"Q. Were you working for the Legislature at that time?

"A. For the New York State Senate.

"Q. What was your position?

"A. I had charge of a department in the Senate. I had to be there everyday.

"Q. How long had you worked for the Senate?

"A. I don't know. I worked in the Legislature since 1936. That's a good long time, in the Assembly and Senate both.

"Q. During your tenure up in Albany, did you become acquainted with Mr. Lamula, the defendant in this case?

"A. Yes, I knew him before he came to Albany, but he came to Albany as an Assemblyman. I think it was 1938. I believe his first year there, but I knew him before that.

"Q. Did there come a time in early 1974 when you first met the plaintiff, Mrs. Bernice C. Grupe?

"A. Yes.

"Q. When was that, do you remember?

"A. That was probably sometime in February or thereabouts because I know I did not know her the first part of the session. I think I knew her by her first husband's name Clark, but she wasn't known as that when we worked in the Senate. She was in the Senate for a session.

"Q. How did you first meet the plaintiff?

"A. Through Mrs. Williams who was then in Senator Bridges' office.

"Q. Did she reside in the same hotel you did?

"A. She did.

"Q. Now, Miss Emerson, did there come a time when the plaintiff requested your help in making investments?

"A. Yes, she wanted to know if I knew of anyone.

"Q. What did you say to her initially?

"A. She asked me if I knew of anyone and I told her I did and she said, "Who do you have in mind," and I told her that it was John Lamula.

"Q. What did she say when she asked you if you had anybody in mind, what did she have in mind?

"A. Well, of course, to make an investment because she had money that was coming due. It was a certificate of deposit which was drawing interest. I think it was a high rate. I think it was 8 percent but they had notified her that they were going to reduce it considerably and she wanted to know what to do about it.

"Q. That it was going to be reduced considerably.

"Do you mean when it became due?

"A. Oh, yes.

"Q. In other words, if she wanted to renew it, it would be at a reduced rate?

"A. Yes.

"Q. Did she mention how much money was involved?

"A. Well, she told me how much it amounted to and I think it was around $100,000.

"Q. Now, did the plaintiff ask for some information about Mr. Lamula's background?

"A. Oh, certainly. When she asked me who I had in mind and I told her, she asked me what I could tell her about him.

"Q. What did you tell her?

"A. I told her that I had known him for many, many years. I knew him before he came to the Legislature and this was an acquaintance that I had with him for a great many years before he came to the Legislature in '38, I believe. Now, I'm not as young as I used to be, of course, but this was way back in the twenties and thirties and I knew John before he became an Assemblyman and -- very well, you want to find out what I told her.

"I told her that he had been very kind to me and had always taken care of my money. I had invested very small amounts and I told her that I thought he was a man of the finest principles and I told her about something that I knew of, of my own knowledge, which I thought was something that would decide me if I wished to deal with him or not. We had a time in the Legislature where I must be a little technical now.

"A Legislature employee cannot be paid without first having the signature of the Speaker of the House and the president pro tem in the Senate. And at that time we did not have them. It was purely political and at that time John was no longer in the Assembly but he was the assistant clerk of the Assembly and it was not a clerk -- in other words, he was a holdover but a clerk cannot hold office only as a holdover for any future time so that he was assistant clerk under this setup for at least two payroll periods that I know of.

"And no employee on the legislative payroll was paid any money and, of course, a great many of them were people who depend on their salary and they were permanent employees and they had mortgages to pay and all that sort of thing and they were getting nothing. At least, it did not seem like there was a very good chance for them presently to be getting any money for some time to come so John Lamula himself made the arrangements.

"He went down to the bank and signed papers, made arrangements with the bank on his own notes and signed the notes so that every person who worked for the Legislature at that time was paid by the bank with the understanding that when they were a Speaker of the House-elect, they could have the payroll signed and they would immediately transfer that check over to the bank and that was done.

"And everybody in the Legislature was very, very appreciative of what John had done for them and I told her about that.

"Q. Did you also tell her that you had invested with John Lamula?

"A. I told her that I did have a small amount that I always --

"Q. What did she say to you after you ventured to her this information?

"A. She said she thought he was the type of person she wanted to meet and she asked me if I could make the arrangements, which I did.

"Q. Over the course of all these years, how frequently would you see Mr. Lamula per year on the average when you talked with him or see him or confront him?

"A. Oh, through all the years that he has been in the Legislature and I would see him very frequently. Now, on the average, he did not run for the Assembly. He was the assistant clerk of the Assembly for a long time. After that, he was connected as a consultant and I would see him practically all the time when he was a consultant in the Senate.

"Q. Well, I understood Mr. Lamula to live in New York City, is that right?

"A. That's his residence. That's where he was registered from.

"Q. Even though your residence was here, you were residing in Cayuga?

"A. That's my legal residence but I kept an apartment all the year-around in Albany.

"Q. Then it was while you were in Albany that it was the center of your contact with him?

"A. Yes. Because that's where I worked.

"Q. Now, there came a time I think you said you entrusted some money of yours for investment; is that correct?

"A. Yes.

"Q. How long ago did you first seek advice or guidance from Mr. Lamula with regard to investments?

"A. That's asking quite a question. Wait a minute now. I'd say certainly before the fifties and quite a bit in the fifties and sixties.

"Q. That lasted continuously then all during that period of time?

"A. Yes and I'd like to state also there was a number of us in the Legislature for whom he did the same thing right down to the Governor's Office.

"Q. So sometimes Mr. Lamula's friends would contact you and ask you to call or get in touch with him yourself or if you saw him and would ask about certain things?

"A. That's right. He asked me to call when he was at his desk and this was many, many times.

"Q. At that time he was assistant clerk, was he?

"A. Journal clerk of the Senate.

"Q. Now, did you call Mr. Lamula and make an appointment for him to see Miss Grupe?

"A. I told him, he came into the office. He usually comes in quite frequently and I think I told him in my office that I had someone who wanted to meet him and to talk to him and I said, why don't you come down to my apartment at the DeWitt that I had at the time.

"Q. Did the three of you meet at your apartment?

"A. Yes.

"Q. Do you remember generally what was discussed at this first meeting?

"A. Well, she told him that she had a certain amount of money that she wanted to have invested and what her plan was eventually to have.

"The way she put it was an income for twelve months of $12,000 a year. In other words, $1,000 for each month and she did not want so much each six months or money in a group. She said she wanted it divided into about $1,000 for each month of the year so that she would still have an income because you want to remember, she was only a session employee and had no idea whether she was going to be taken on again or not and that's why she made that provision quite clear as to what she wanted.

"Q. Did she mention at that time what kind of investments she wanted to make?

"A. Well, yes, but she said she did not know anything about investments but she said she always understood that you could make money on the stock market but John told her that he did not think this was the type of thing she wanted, if she wanted $1,000 a month, in order to be sure of it, there might be bonds.

"Q. Did she mention to Mr. Lamula that her money was in certificates of deposit?

"A. Yes.

"Q. Did Mr. Lamula make any comment about the advisability of keeping this money in certificates of deposit?

"A. Well, he told her that she had no way of getting more interest. That if she decided they were not going to pay it, then she would make up in her mind that she would be getting less.

"Q. Did Mr. Lamula say to her to keep that investment or that she was in danger of losing her money in this certificate of deposit?

"A. No. He just told her that she would lose a certain amount of rate, that's all, if they did not decide to pay it.

"Q. Now, this first meeting took place in or about March of 1974, would you say?

"A. Yes. It was in March. I think you are safe in saying March.

"Q. When was the next time after the first meeting that a meeting was held among the three of you again?

"A. Practically every week that John and I were there, but I was not there in April one week because the Legislature had adjourned for Easter and I went to Myrtle Beach.

"Q. With the exception of that week, would you say that between March and May you would meet on the average every week?

"A. Almost every week."

MR. BLUM: In this next passage, the questioner was I.

"Q. Miss Emerson, you were telling us a little while ago about Mrs. Grupe's certificates of deposit and I think you said she also had a bank account.

"A. She told me that she had other money.

"Q. What did she say to you about that?

"A. She said she would rather leave that money in reserve.

"Q. Did she tell you how much it was?

"A. No and I don't know how much it was.

"Q. Was it your impression that it was a good-sized amount?

"A. Yes, it was a good-size amount, at least my impression was that it would be at least 20,000 or 25,000, but I wouldn't know definitely.

"Q. Well, during these discussions which took place between March and May with Mr. Lamula when you were present, was there any discussion in any way about other bank accounts, was that mentioned at all?

"A. No. I don't think it was.

"Q. Well, did Mr. Lamula ask Mrs. Grupe about her assets or what she owned?

"A. No. Because all it started out with in the beginning was the investment of money and this was before the certificates.

"Q. Well, did Mr. Lamula ask Mrs. Grupe about other assets?

"A. I don't remember that he ever asked her any other questions because all she was interested in was an investment that would get her $1,000 a month.

"Q. Did she say how many stocks she owned or anything like that in this discussion with Mr. Lamula? Did he ask her whether or not she had any stocks or other assets?

"A. I think he asked her about any stocks and I think she stated no, but I think something was found later on, I don't recall.

"Q. But did he ask her whether or not she owned any real property, do you remember that?

"A. Did she own any real property?

"Q. Yes, do you recall Mr. Lamula asking her any questions about that?

"A. I don't remember that he ever asked her if she owned it, but I'm sure that she did.

"Q. Did he ask her anything whether or not she had any bonds at that time?

"A. I don't remember that. I don't think he did."

MR. BLUM: In this next passage, the questioner is once again Mr. Goldstein.

"Q. You testified, did you not, that Mr. Lamula had at one point stated that bonds were a proper investment for the plaintiff?

"A. Yes, he did, he thought.

"Q. Did he expound on his reasons for suggesting bonds to the plaintiff at future meetings?

"A. Yes, he did.

"Q. How did he do so?

"A. First he told her -- but you must keep in mind that her plan was to be an investment in the way that she had suggested for this monthly income. In order to get what she wanted, it would be bonds that were of small companies rather than large companies. Because about that time Consolidated Edison, and I think you are both aware of what happened with them, and he told her about this and this was one reason why he himself could investigate all these small companies. The small companies, for the most part, would be that he knew some of the officers and some of the men in the company and was able to investigate their companies, whereas with large companies, it would be difficult to do.

"Q. Did the plaintiff ever ask Mr. Lamula about ratings?

"A. Yes.

"Q. What did she say and what did he say?

"A. I think he said, she asked about the rate, I believe, and he said it did not make any difference. She asked him if he was going to get a bond and he said no. He again told her, and again I'm repeating myself, that he preferred to have people who wanted a certain income. He preferred to sell them bonds that he had invested in and that he knew the people that he was dealing with with these companies and he could investigate them because they were small and reliable companies and I keep repeating all of these things, as I said before.

"Q. Did Mr. Lamula mention to the plaintiff the term convertible debentures?

"A. I think that he did."

MR. GOLDSTEIN: There was an objection there.

MR. BLUM: It was my objection and I withdraw it at this time.

"A. I think that he did, but I don't believe it was at the time you are speaking of.

"Q. Not necessarily at this time, I mean at any other times when he was there.

"A. Yes, he did.

"Q. Did he explain what convertible debentures were?

"A. Yes, he did.

"Q. At length?

"A. Quite at length.

"Q. Did he ever ask the plaintiff if she knew what he was talking about?

"A. Oh, many times.

"Q. What was her response?

"A. Oh, yes, she knew about them but she still wanted him to make her investment."

The next passage is where I was the interrogator.

"Q. Was there any discussion that you can recall during all of that period of time about Treasury bonds?

"A. I never heard of that. John never discussed any Treasury bonds with her.

"Q. Did he ever recommend that she put her money into any type of savings accounts?

"A. Yes.

"Q. Did he recommend that to her?

"A. He recommended -- bonds you are talking about? I don't believe he ever suggested bonds. I think there was some discussion about savings accounts. I think there was something about a rate or something.

"Q. Did he ever discuss a higher rate of interest in a savings bank in California, for example, was there any discussion about that?"

MR. GOLDSTEIN: At that time I objected to the question and I still do.

THE COURT: On what grounds?

MR. GOLDSTEIN: On the grounds now we are getting into areas that are totally foreign to this case.

Your Honor, as I pointed out in my opening, Mr. Blum could ask that he talked to her about investing silver and gold, about real estate in Mt. Everest, anything and everything and it has no relevancy to this case.

MR. BLUM: Your Honor, if I may, I think it's of the highest relevance to know whether or not other types of investments or safer repositories for her money were discussed by Mr. Lamula. I think it's an entirely appropriate question.

THE COURT: I think you will find when you get down to the answer it's not particularly correct and doesn't establish very much, but I will allow the question.

"A. You are talking about a higher rate? Where now?

"Q Did Mr. Lamula suggest or mention to Mrs. Grupe that there were higher rates of interest to be obtained from banks, for example, in California, than in New York?

"A. I'm trying to think. I don't think there was any mention of it because all she kept saying is what she wanted to get out of it. Whether it was a savings account or whatever it was, she was interested in an investment that would get her $1,000 a month. That's what she kept repeating time and again.

"Q. Was anything said about common stock if you remember, did Mr. Lamula ever mention anything to Mrs. Grupe about common stock?

"A. When stock was mentioned, he said that that was not the way for her to get what she was depending upon. She wanted to get $1,000 a month and he said stock was not the way that he would recommend doing it. He told her that he could not guarantee her anything if she went on that because if they reneged, she could be cut off completely and she would have nothing. Even though she might be able to get dividends, it would not be enough. Certainly wouldn't come up to what she wanted which was $1,000 a month. That was the main thing she was interested in. That's all that she would talk about.

"Q. What Mr. Lamula recommended to her I think you testified earlier, I jotted it down, bonds of small companies rather than large companies, I think those were your words.

"A. That is correct.

"Q. Did he discuss any other large company bonds with her?

"A. Yes, the Con Edison, the one that I referred to earlier.

"Q. And reported that it had failed?

"A. That's right.

"Q. Did he mention convertible debentures of American Telegraph or American Telephone?

"A. No, but there was some discussion about Penn Central or the New York Central and what happened to them.

"Q. Now, did Mr. Lamula ever talk about tax-shelter yield, do you remember that term, tax shelter?

"A. Are you referring to tax-free bonds?

"Q. I'm talking about whether Mr. Lamula ever mentioned the term tax shelter during that ten hours or more of discussions?

"A. Yes, I think he did.

"Q. What did he say about that?

"A. He did not recommend tax-free bonds for her.

"Q. What did he say about tax-free bonds?

"A. That they were mostly all municipalities.

"Q. What was discussed about that?

"A. That that was the reason why it was not wise for her to do that in order to get what she wanted, which was $1,000 a month.

"Q. But he said that it was municipalities and that it was not a wise investment, is that correct?

"A. That's correct.

"Q. What did he say about bonds from municipalities that he thought were not safe or wise?

"A. He did not say it wasn't safe. He said it wasn't wise.

"Q. What was the reason that he gave, if any, that it was not wise?

"A. I don't remember what the reasons were, but he merely said that it was not wise.

"Q. Well, what did he talk about?

"A. That this was not what she wanted. I'm trying to think exactly of what he said. I'm sure it was not what she wanted if she was expecting $1,000 a month.

"Q. Did he mention anything about investment in oil interest, does that ring a bell?

"A. No, I don't remember him saying anything about oil as such.

"Q. Did he talk about a high yield from mineral investments?

"A. Gold, you mean?

"Q. Well, gold, did he mention investing in gold?

"A. No.

"Q. Did he mention anything about coal mines?

"A. No.

"Q. Did he suggest investing in real estate?

"A. No.

"Q. Did he talk about the yield from investing in real estate?

"A. No. I don't think he talked about anything in that respect.

"Q. So the entire conversation was limited between corporations where he knew someone in the corporation, is that correct?

"A. That is correct, because he felt that it was his duty I'm sure and that's the way he explained it to me also.

"Q. There was one item that I jotted down.

"I think you said that John Lamula had recommended these bonds in small companies and I think I've got the words right, "For people who wanted to have a certain income, that this was the best." Did I quote that correctly or thereabouts?

"A. Yes."

In the next passage, Mr. Goldstein was the interrogator.

"Q. You say that you do recall that he discussed all of them with her?

"A. Yes, I do. As a matter of fact, I can remember."

MR. GOLDSTEIN: Your Honor, I think at this time based upon the prior testimony that Mr. Blum was reading, there has to be an explanation to the jury.

THE COURT: Yes, the question is not understandable without the prior two pages starting back on Page 23 at Line 9.

"Q Now I am going to give you the names of some bonds and ask you if you remember the specific names. Do you remember Mr. Lamula discussing Allegheny Beverage Corporation with the plaintiff?

"A. Well, I should say I don't remember all of these. That one particular but he explained them all to her in great detail. I don't recall that specific one at this time but he may have.

"Q Do you remember the D.W.G. Corporation?

"A. Yes.

"Q Do you remember Mr. Lamula discussing this with the plaintiff?

"A. Yes.

"Q Prior to purchasing?

"A. Yes. He discussed all of them with her.

"Q Do you remember him discussing Applied Data Research?

"A. Yes.

"Q What about the Arwood Corporation?

"A. I'm not sure about that.

"Q. What about Inflight Services?

"A. I have that myself so there really wasn't any need for me to listen.

"Q. But did you hear Mr. Lamula discuss that with the plaintiff?

"A. Yes. I heard him, yes.

"Q. How about Knight Industries?

"A. No. I don't remember that one.

"Q. How about Lincoln Mortgage Investors?

"A. Yes.

"Q. How about Nortek Industries?

"A. I can't remember that but he still went through all of them with her, all the names. I don't remember now.

"Q. What about Technical Operations?

"A. Yes.

"Q. How about the Monroe Group?

"A. I don't remember that specifically but he discussed them all.

"Q. You say that you do recall that he discussed all of them with her?

"A. Yes, I do. As a matter of fact, I can remember him saying that he knew many of these people in these organizations and he knew what their connections were, and that he could find out what he thought was necessary to find out to advise her about buying them.

"Q What did he tell her in these conversations?

"A. He explained various bonds to her and he said, do you understand this, and each time she would say, let's not talk about it now, and he would say, I would rather that you look it over. I want you to mark up those boxes and anything you don't understand, I want you to tell me.

"Q. Who said that?

"A. Why, John Lamula, of course.

"Q Did he review a lot of these documents with Mrs. Grupe?

"A. Oh, yes, and he brought up -- this was late but he brought up a chart of at least this charge and it had a list of the proposed bonds that was the first column and the second column or the number, and I think there was a third column which was the amount of yearly interest and then all the columns were divided into months and carried out into each month. It was the date the interest was paid and how much it was and he told her to study that.

"Q. I show you this document previously

marked into identification as Plaintiff's Exhibit 20 and ask you if you recognize it.

"A. Yes, that was it.

"Q. This is just for identification.

"A. Yes. That's it. I think I'm right in the interest here.

"Q. That is the column you say you remember?

"A. Yes. That was it.

"Q. Now, did Mr. Lamula give this to the plaintiff to study it at one of these meetings?

"A. Yes.

"Q. And did he --

"A. She said it was exactly the way she wanted it, about $1,000 a month.

"Q Did she take the document home with her do you know, did she take it out of your apartment?

"A. Let's put it this way. He came up here many times with many, many papers and brought up books on various bonds for her to look over.

"I also want to say that John, Mr. Lamula, asked her if she had a broker, and her home at that time I think was Buffalo and she said that she knew a broker in Buffalo and he asked her if she wanted to have him buy them, he would transfer the information that he had and she said no, definitely not. That she did not want anybody up there to know what she was doing.

"Q. Did Mr. Lamula ever inquire if there was anybody else that had spoken to her about her financial situation?

"A. Oh, yes, she had a son who was a lawyer. I can't remember the town now, but it was in New Jersey. I never met him so I don't know him and John asked her his address and said that he wanted to talk to him about this investment and she said no, that she did not want him to know anything about what she was doing and John said, I think you should. He is your son and she said no."

Now in the next passage, I was the interrogator.

"Q. When the words certain income was used, did he mean a guaranteed set amount?

"A. $1,000 a month was what she wanted. That was her main interest and that's all she was concerned with, an income of $1,000 a month.

"Q. Because this is what she wanted?

"A. Yes, and I think John said to her, am I correct in that, John, John said to her that convertible debentures were the best for people who wanted to have a certain income. He mentioned various companies to her. Now, I don't recall them specifically but he did state that convertible debentures are the thing that you must invest into or the thing that is best for you to invest into if you want $1,000 a month and this was her primary concern.

"Q Now, was there anything said about ratings?

"A. I don't recall anything specific being mentioned about rating except that there might have been a rating of these companies.

"Q What was said in that regards, about ratings of companies?

"A. There was mention about one company that misquoted a rating and was indicted for it.

"Q Did Mr. Lamula ever tell Mrs. Grupe during these discussions what the ratings were of these bonds or debentures which appear in Plaintiff's Exhibit 20, did he go down this list and tell her how these various companies were rated?

"A. To my knowledge, he did not. All he said, "Now if there is anything here you don't understand, tell me." And he would have mentioned various things and he explained to her and she wasn't interested in the rating at all and he brought out the fact that one of these companies was indicted, but as far as discussing the rating for each one, no, I don't recall that.

"Q Did he ever discuss the rating given by Moody's?

"A. No, he did not because --

"Q Was there any mention of Moody's?

"A. I don't believe there was ever any mention of Moody's because I remember reading about it but I don't believe there was ever any mention of Moody's.

"Q. Now, I believe you said that literature was shown to Mrs. Grupe by Mr. Lamula for every one of these companies before any investment was made.

"A. Oh, yes.

"Q. He discussed each one of these thoroughly with her, did he?

"A. They were all discussed and he also brought some booklets and various other things for her to review.

"Q. Did he mention annual statements, proxies and that type of thing?

"A. Yes.

"Q He went over them with her, did he?

"A. He went over everything and he asked her to mark them if there was anything that she did not understand.

"Q Did she ever say to him, "John, I don't understand this kind of thing. How am I supposed to read one of these things"?

"A. You must remember, as I said before, she had no background in economics at all. She said, "I'll put this in your hands." Because she had no background in economics at all.

"Q. She said, "I'm putting this in your hands," is that right?

"A. What she wanted him to do was to assure her that she would get $1,000 a month and that it was all in his hands, to see that's what she got, is all.

"Q. Did you see Mrs. Grupe pretty frequently, not just weekly, during these meetings?

"A. I saw her almost every night at the apartment and for dining.

"Q. And between you, I presume, you must have talked about these investments because --

"A. Oh, certainly I did, some, yes.

"Q. And she discussed these matters with you privately, didn't she, when John was not there?

"A. That's right.

"Q. Did she say anything about trusting Mr. Lamula with these investments?

"A. Oh, yes.

"Q. Did she tell you that she understood all of the details or did she say something else?

"A. That she trusted him completely and was always very satisfied.

"Q. Did she say she was impressed with him, I am not talking about the incident at the airport now? I'm talking about the meetings that took place, these ten or more meetings that took place between March and May, did she say she was impressed with him?

"A. Very impressed with him throughout.

"Q. And that she was impressed with his judgment?

"A. Yes.

"Q. And did she say that she was impressed with him as a person?

"A. And with him as a person, yes."

In the next -- this is still my interrogation.

"Q. Was there any discussion about preferred stock at any of these meetings? Now by "these meetings," I mean between March and May.

"A. The first discussions before they went into these companies, they decided on, Mrs. Grupe agreed that her money was not going to be invested in stocks. It would be invested in bonds.

"Q. And did Mr. Lamula agree with that recommendation?

"A. Oh, certainly.

"Q. He made that recommendation, did he not?

"A. Certainly. That's what he said, that it was the only way that she could do it to get what she wanted.

"Q. What did she say to that?

"A. She said that it was all right, so it was agreed upon that there were not to be any stocks involved.

"Q. Was there a discussion about what a convertible debenture was?

"A. Oh, yes. This was discussed in detail and I'm sure she understood it.

"Q. Was there a discussion as to how it differed with common stock?

"A. Yes.

"Q. What was said?

"A. In converting, it had to be converted at a set price.

"Q. But what is your understanding as to the difference between convertible debentures and common stock?

"A. You said common stock?

"Q. Yes.

"A. Common stock is sold on the market. Convertible is if you wish to convert into a stock company, you convert it at the amount that's named on your bond.

"Q. Was there anything said about sinking funds?

"A. Yes.

"Q. What is your understanding of sinking funds?

"A. Insurance, I suppose, that the banker's security insists on, this being a protection for investors and companies that is issuing the bond. They must provide for a sinking fund.

"Q. Do you know?

"A. I know it's a type of insurance.

"Q. Well, where would the money come from in the sinking fund?

"A. The money comes from the company buying back its bonds.

"Q. So your understanding --

"A. In other words, to keep a certain sinking fund that has an increase all the time. I'm sure that's part of the regulations that are made. I don't know who makes them, whether it's the banking, securities or what, but I know it is a required thing.

"Q. Now, what does the term convertible subordinated debenture mean to you?

"A. A subordinate? I don't know how to put it in words, but I believe you can convert your bonds into stock but I don't know about this.

"Q. Well, what does subordinate mean?

"A. It means the stock -- what I'm trying to say is you have to convert at the highest amount and you might have to pay for it on the Stock Exchange.

"Q. Did you hear Mr. Lamula explain that to Mrs. Grupe?

"A. I heard him explain these things to her, as I told you before, he explained to her that if she didn't understand anything, to make it known to him. I'm sorry I didn't pay more attention to what they were saying but I do know that he explained them to her and I'm sure that he can explain it to you much better.

"Q. Well, let me ask you this. Maybe I can clear it up. Was there any discussion of her health during any of these meetings that Mr. Lamula attended between March and May of 1974?

"A. No. None whatever.

"Q. That wasn't discussed at all while he was there?

"A. No, but I know. She told me in confidence and I don't like to answer your questions unless I have to regarding this.

"Q. I understand fully your position, Miss Emerson, but I have to insist on it because I believe that it's relevant. Did Mr. Lamula ask her any questions about her health?

"A. Not that I recall. I never remember that being discussed in any way, shape, or manner when he was present.

"Q. Well, you said that she said repeatedly that she wanted an income of $1,000 a month.

"A. Yes. That was her aim and to use the money that she had for that purpose.

"Q. Did John Lamula discuss with her, in your presence, what she planned to do with $1,000 a month?

"A. Yes.

"Q. What was the discussion?

"A. She said, well, she had only a secretary's job and she had no way of knowing whether she would get another, whether she would have any income coming in and so she felt that because there was a question of whether or not she could get a job, she wanted to have an income, a steady income and that's why she was insisting on this thousand dollars a month. Now, as I said before, --

"Q. My question, Miss Emerson, was not whether he brought to her what her intentions were as to how she was going to spend it, but, rather, did she tell Mr. Lamula anything about how she was going to use her money or what she was going to spend it on?

"A. She said that she had to have it to live on. That's all that was said.

"Q. Was there any breakdown of financial statement of any kind as to how that was to be allocated for her expenditures?

"A. No.

"Q. Did he ask her any information about any additional amount needed beyond this monthly sum?

"A. No.

"Q. Did you ever hear discussed or impressed any medical conditions?

"A. There wasn't any discussion about that. It was a matter purely of investment and nothing personal."

MR. BLUM: This is 44 and the interrogator is Mr. Goldstein at this point.

I am starting in the middle of that and dropping the first clause of that, your Honor. It says, "Well, I'll let her answer stand." There was a series of objections which preceded that which I don't think relate to the continuation of the testimony.

Any problem on that?

MR. GOLDSTEIN: All right, no problem.

MR. BLUM: "Q. But during these sessions, did Mr. Lamula go into detail to explain the type of investments he wished to make for the plaintiff?

"A. Oh, yes. I told you before that he would bring up books and all sorts of information for her and they would go through it. I would listen to it because I would be right in the room. It was just an ordinary hotel sitting room.

"Q. Did he ask Mrs. Grupe periodically if she understood what he was saying, what he was explaining to her?

"A. Yes.

"Q. What was her response?

"A. She always answered yes.

"Q. She would always answer yes?

"A. Yes. When he was explaining something to her, I don't believe she ever asked any particular question. Now, you must remember that she stated that she was not educated in economics. She said that she never had time for it.

"Q. Going back to the initial period between March and May 1974 where these weekly meetings were held, did the plaintiff ever tell Mr. Lamula that she did not understand something that he was talking about?

"A. She said, "I don't know anything about investments. I have never studied investments," but you must remember she was a very well-educated person. She was a very brilliant woman. She had a Master's Degree. She worked for the Education Department and had a very good job and she went all over the country for IBM. Now, what I'm trying to say is --

"Q. Perhaps, Miss Emerson, if you would, just answer the question.

"A. I'm just trying to tell you this.

"MR. GOLDSTEIN: I believe the question was did the plaintiff ever tell Mr. Lamula that she did not understand.

"A. I am only telling you what she said to me. She told me that she never had time to do any studying on economics because she said that all her time was taken up.

"Q. Did Mr. Lamula show the plaintiff annual reports of all of the companies and --

"A. Well, he was --

"Q. Let me finish the question. Did he show her the annual reports of all the companies in which he later invested her money prior to her purchasing these securities?

"A. Oh, yes. And he always brought a book on each one of them. As I said earlier, he asked her to go through them all and mark any of them and if there were any questions, to ask him about it. And he went over every one of them with her."

In the next passage, I was the interrogator.

"Q. Did he say anything about the price that she would have to pay for these?

"A. He said that they were all a lower price than the price of the bond.

"Q. Now, in a securities sense, what does the term "market-maker" mean to you?

"A. What's that again?

"Q. Marker-maker, does that term mean anything to you?

"A. It means nothing to me. I don't read the market news. It has no relationship to me at all. There is no reason for me to read the market news.

"Q. Now, do you know what the business of

D.W.G. is?

"A. No. I don't.

"Q. How about Inflight Services?

"A. Well, of course I assume that has something to do with flight, but I'm not interested in that.

"Q. And you never heard about Allegheny Beverages, is that correct?

"A. That's right. I wasn't interested in that at all. In other words, as I told you, I wasn't actually interested in what was being discussed but he always brought up the fact, do you understand this. If you don't, please tell me about it. I want to make sure you do understand. He always kept telling her if there were any questions that were on her mind to tell him about it.

"Q. Didn't he tell her what these companies did?

"A. Yes, he did, but I don't know what they did.

"Q. But did he say to her what these companies did?

"A. I presume he did, but I wasn't interested in that part of it.

"Q. But you were there in the room that was large enough so that you were always alone with them and present.

"A. Yes, that's right. But I was not interested in what they did, in any event. As a matter of fact, I can't even tell you what my own are doing.

"Q. But none of these companies, Nortek or the Allegheny Beverage Corporation, was the subject that you recall?

"A. No.

"Q. Or Inflight Services?

"A. They don't mean a thing to me.

"Q. But you were present when Inflight Services was discussed?

"A. If it was. I'm sure it was, but I wasn't paying attention to it. That was a business of theirs. I was only listening to him when he explained something but I didn't listen to him when he described something like this is such-and-such, and this is a bond that's issued. I'm not an agent so I don't know what it actually was.

"Q. Well, I'm not trying to say -- but you were there and you were listening, were you not?

"A. I was there but I wasn't paying attention to everything that was being said.

"Q. Now, are you telling me that you don't recall what any of these corporations did, is that correct?

"A. No.

"Q. Do you recall whether Mr. Lamula told her what they did?

"A. All I presume is, I'm sure he did.

"Q. But do you know that he did?

"A. I'm certain that he did, but I didn't pay any particular attention to what went on. All I can tell you is he said to her many, many times, now if you don't understand this or that, mark it up or let me know about it.

"Q. In other words, you would listen up to a point when he mentioned a company but when he started to tell her what these corporations did, that was the moment you stopped listening to whatever he was telling her, is that right?

"A. No, that's not what I'm saying at all. I just didn't pay any attention all the way through. Not all through these discussions, only as to when the bonds matured, what the rate would be, how much that would make for her. Like when it would be matured in 1997 or whatever the date was that she would make so much interest. She would get this back, plus a new amount. Those were the things I listened to, but other than that, the rest of the conversation, so much percentage, plus the second new amount back, these were the only things that I listened to. I didn't pay specific attention to each of these companies. There was a certain interest or rate amount discussed, but as to each specific one, I couldn't even tell you about it at this time.

"Q. Now, were you paying attention when there was discussion about what convertibility was?

"A. Yes.

"Q. You listened to that?

"A. I know it was discussed.

"Q. You listened to it and you listened to what was talked about?

"A. Yes. I know it was.

"Q. But you don't recall what was said about subordination?

"A. I don't remember subordination as such.

"Q. So you don't recall whether subordination was ever discussed?

"A. No. I don't recall the subject of subordination or anything like that.

"Q. Now, you originally assumed that these different securities were talked about, is that correct?

"A. No. I don't know whether they were talked about.

"Q. Well, you didn't listen, then, when these were discussed, you didn't listen then, did you?

"A. Frankly, it was not my men. You asked me if I heard the gist of it and I told you what I heard about it.

"Q. So, if there were others discussed, you can't recall, is that correct?

"A. Some of the names I heard before and some I didn't. I told you that before.

"Q. So there were some that you didn't hear, is that correct?

"A. That is correct.

"Q. So some of the discussions you paid attention to and some you didn't, you ignored the discussion?

"A. I did not ignore the discussion. I told you what I heard and what I didn't hear. I certainly didn't ignore them.

"Q. In other words, when they started out, anything that was said you probably paid attention to and then other phases of it you didn't pay attention to?

"A. That's right. When they started discussing something that I was not too much interested about, I decided not to listen.

"Q. In other words, you just tuned yourself out?

"A. Yes.

"Q. So that there might have been a great many other things that were discussed?

"A. There probably were other things that were discussed.

"Q. A great number of things were talked about that you don't know about, is that correct?"

Then an objection was made by Mr. Goldstein.

MR. GOLDSTEIN: I still do object because of the ambiguity of the question, your Honor.

THE COURT: Sustained.

"Q. I'm trying to find out whether during these ten or more discussions between Mrs. Grupe and Mr. Lamula that were participated in when you paid attention to some and according to your answer you said you didn't pay attention to others, so that there could have been a great many other things that were talked about, is that correct?

"A. I didn't say that. I said I didn't pay any attention to a named one. I don't recall that exact name being used, is what I said.

"Q. So you paid attention then to everything that took place in these meetings, is that correct?

"A. I did, but I do not recall the particular name that was used. I don't recall the businesses being discussed or who they were. The only thing that she was interested in was the amount of money that would come back to her and I listened to that very carefully.

"Q. That was the only thing that you were interested in?

"A. Well, now, as I have said that over and over again, how many times do I have to say that. I'm telling you that she wanted to get $1,000 a month or $12,000 a year and he told her that she would get $1,000 a month plus possibly more. He would get as much as he could for her.

"Q. What I'm getting at, I'm suggesting, Miss Emerson, that during the latter part of the discussions there might have been a great many other things that were technical in nature so that you didn't understand them, is that so?

"A. The names of the companies, certainly."

MR. GOLDSTEIN: Your Honor, I think that should be said in a different way. There is a semicolon there.

MR. BLUM: I will read the question, again.

THE COURT: No, please. We have been over these things three and four times already. This question has been asked three or four times already. Just let's go over it and get on to the next question.

"Q. You don't recall the names of the companies?

"A. I said I don't know the technicalities of the names of the companies. No, I do not. I don't know what business they are in or anything like that. I have no way of knowing. I'm merely telling you what I heard and so related to you.

"Q. Well, was there a discussion of the technicalities of ratings?

"A. I told you what was said about ratings."

THE COURT: Let me interrupt at this point to say I can understand the witness' exasperation because she is being asked the same questions three and four times and she is giving the same answers three and four times. A little weeding out here wouldn't have hurt.

MR. BLUM: Your Honor, as you see, there is a great deal that has been weeded out. This is about one-quarter of the transcript.

THE COURT: I am familiar with the proposition that in repetition there is emphasis, but there is too much repetition here.

All right, keep on with it.

MR. BLUM: I think if I may, your Honor, something emerges from the repetition, too.

THE COURT: I hope.

"Q. Well, was there a discussion of the technicalities of ratings?

"A. I told you what was said about ratings.

"Q. Then there was something more said, wasn't there? Could there have been more said about ratings that you were not paying close attention to?

"A. No, there wasn't anything more said about ratings than has already been said.

"Q. Well, when Mr. Lamula pointed to these annual statements, what did he say about them when he pointed them out to her?

"A. He gave them to her.

"Q. What did he say or did he just hand them to her?

"A. No, he didn't just hand them to her. I explained to you before that he opened them up and went through each one of them with her and he would say to her, there is this one here, there is that one there, I want you to read that through carefully and he gave them to her and said, I want you to read them through carefully and mark them up and what you don't understand, ask me about it.

"Q. Did she tell him that she had read them carefully?

"A. No, I don't remember whether she said she had read them carefully or not.

"Q. So you don't know whether she said she had read them carefully?

"A. No, it would have been meaningless to me because I don't recall. The only thing I recall is him telling her to go through each one of them carefully.

"Q. Did she, in fact, ever tell you that she had gone through each of them carefully?

"A. I don't recall.

"Q. Was there any discussion that you recall at these meetings during March through May about possible default?

"A. What do you mean by "default"?

"Q. What I'm talking about, was the term default in payment used?

"A. In payment of what?

"Q. On the bonds, on the debentures, was that ever mentioned by Mr. Lamula?

"A. Very clearly.

"Q. What did he say?

"A. That the first thing that had to be paid by the company was the interest on the bonds.

"Q. Did he express any opinion that you heard during this period of time, what you were paying attention to, with regards to the chances of default on interest payment on any of these securities listed here?

"A. Now just a minute. Do you mean Mrs. Grupe speaking to me about that?

"Q. At any of these meetings was anything mentioned during that period of time, do you recall Mr. Lamula telling Mrs. Grupe what he thought that the chances were of any of these corporations not paying their interest?

"A. I think he said that he had investigated each one of these companies and that he was familiar with them and that he personally recommended them as sound investments.

"Q. Did Mrs. Grupe say that you ever heard of her knowing of these companies before John Lamula explained them to her in these discussions from March to May?

"A. In front of John with John you are talking about or do you mean that she and I talked about?

"Q. Both, partly during the discussion that

Mr. Lamula had from March to May, did she say anything about any of these companies that she might have known about?

"A. I don't remember hearing her say whether she knew any of them or not.

"Q. What did she say when you were alone with her then?

"A. All the discussion we had is what I repeated to you time and time again. She said I've got to have $1,000 a month. I'll feel safe if I have $1,000 a month. That's what she was very concerned about.

"Q. You understood that to be, when she was very concerned, that she was concerned about a guaranteed income, is that right?

"A. Yes, certainly. She wanted $1,000 a month because she didn't know whether she would be able to get another job because a sessions employee is very precarious."

THE COURT: That's the fourth time we have had that answer.

MR. BLUM: "Q. Let me try to understand something about these meetings. All the time it took place in your apartment at the DeWitt?

"A. In my apartment. I had three rooms.

"Q In what room did these discussions take place?

"A. In the living room.

"Q How large a room is that?

"A. A room larger than that area.

"Q. Do you know approximately the size of it?

"A. I wouldn't have any idea as to the size.

"Q. Would you say that it was larger than this room?

"A. It was larger than this room.

"Q. A hotel sitting room then?

"A. Yes.

"Q. A room in which there was furniture and other things?

"A. Yes.

"Q. These discussions that you say took place in your living room between March and May when the investment was made, took place in that room, is that right?

"A. That's right.

"Q. And this all went on when you were present, is that right?

"A. That's right."

MR. GOLDSTEIN: Your Honor, I think it should be explained to the jury that when Miss Emerson was comparing the size of her room to this room, it was in a different room than this courtroom.

THE COURT: I think that's apparent.

MR. BLUM: May I have a moment, your Honor, things are happening here with regard to the next witness?

THE COURT: You are almost to the end of this. Why don't you complete it?

MR. BLUM: "Q These discussions that you say took place in your living room between March and May when the investment was made, took place in that room, is that right?

"A. That's right.

"Q And this all went on when you were present, is that right?

"A. That's right.

"Q And it's your understanding that you were actually present at all discussions that were had and that these took place prior to the making of these investments?

"A. Yes."

In this next passage, Mr. Goldstein was the interrogator.

"Q Did there come a time when the plaintiff specifically authorized Mr. Lamula to buy specific named securities for her?

"A. Naming them specifically, I wouldn't know. He would get one and she said, that's all right. You know, you take care of it, but as to any specific one saying this was all right, no, not to my knowledge at all now.

"Q. Now, Miss Emerson, do you remember approximately when Mr. Lamula first purchased bonds for the plaintiff?

"A. He couldn't have purchased any before he got the money from the bank.

"Q. Do you remember approximately when this was?

"A. She didn't want to go to the bank alone and he suggested that he go with her to the bank and it was I who suggested going to the bank with her because I knew the head of the bank."

Now, in this next passage once again I was the interrogator.

"Q. Didn't he recommend the bank that she should open her account with?

"A. He didn't open an account. He went there with her and she signed a note."

Now in the next passage, Mr. Goldstein was the -- I'm sorry, no, I was the interrogator.

"Q Did you have any discussion with her about Seaboard common stock?

"A. No.

"Q Never?

"A. Not Seaboard, no.

"Q Did you ever have any discussion with her about any particular common stock between January of 1974 and August of 1974?

"A. The only discussion we had about stock at any time was to the effect that there was a great deal of difference between stocks and bonds and it was completely general and that's all.

"Q Now, did she tell you at that time that she had any interest in Seaboard common stock?

"A. No. I never heard of Seaboard.

"Q Did Mr. Lamula ever discuss --

"A. Seaboard, no. Not that I know of. I'm very sure of that because I would have known about that because of the rates that they charge you on these ships or how much the trip would cost you per day and I know how much I would have to pay."

In this next passage, Mr. Goldstein was the interrogator.

"Q Miss Emerson, up to August, up to the beginning of August 1974, had the plaintiff expressed any dissatisfaction with the way Mr. Lamula was handling her accounts to you?

"A. No. She asked me and I don't know exactly when this was, I can't tell you whether it was in August or what time it was, I couldn't begin to tell you but I know that she called me quite a few nights.

"Q. What did she say?

"A. I think at one time she said -- let me think about this. Now you are asking about any dissatisfaction?

"Q. Yes, any dissatisfaction expressed to you by the 1st of August as far as her investments, et cetera, et cetera.

"A. I don't think she said, no. No, I don't think she expressed any dissatisfaction about her investments. I think she expressed dissatisfaction with John not being to see her."

MR. BLUM: That's the end of the passages I have marked for reading-in, your Honor.

THE COURT: Cross examination?

MR. GOLDSTEIN: Just a couple of pages. I didn't have a chance before to list the pages that I will go on. There are just a very few.

Pages 10 and 11.

THE COURT: Starting at line?

MR. GOLDSTEIN: 24. This is my questioning.

"Q Did she mention at that time what kind of investments she wanted to make?

"A. Well, yes, but she said she didn't know anything about investments. She said she always understood that you could make money on the stock market. But John told her he didn't think this was the type of thing she wanted if she wanted $1,000 a month, in order to be sure of it, there might be bonds."

THE COURT: Just a minute. Do you realize that question was already read and answered?

MR. GOLDSTEIN: That's because I am going to follow up below which Mr. Blum did not read.

Line 12 on Page 11.

"Q Did she mention specifically anything about stocks?

"A. No, not specifically. She said she knew that money could be made in stocks. That's what she said, but John told her for the type of income she wanted that stocks wouldn't be the thing."

Now we are on Page 27. I am questioning. Beginning on Line 6.

"Q. Now, after the original bunch of securities was purchased in late May, do you remember Mr. Lamula discussing with you Mr. Lamula's purchase of some additional convertible debentures of Technical Operations sometime in June with you?

"A. Well, I know she had an extra amount of money which she still wanted to invest and she was not sure about these bond investments at all and she discussed them with Mr. Lamula.

"Q. Did she ever discuss with you Mr. Lamula advising her to buy additional securities in Technical Operations?"

MR. BLUM: I object to the form of the question.

THE COURT: Overruled.

MR. BLUM: Your Honor, it's a leading question. This was his witness.

THE COURT: Overruled.

"Q. Miss Emerson, did Mrs. Grupe ever complain to you that Mr. Lamula had purchased shares of securities without her permission?"

MR. GOLDSTEIN: There was an objection.

THE COURT: Overruled, again.

"A. Oh, no."

The next is on Page 80. Mr. Blum was cross examining at this time. Beginning on Line 16.

"Q. Now, you were present when he went over annual reports, weren't you?

"A. Yes.

"Q. How many times, do you recall, was it that he went over the annual reports?

"A. I know of at least five and six times that they went over it.

"Q. Five or six separate times?

"A. Yes, but perhaps not all of them at each time.

"Q. Well, is it a fair statement to say that there was a discussion on each one more than once?

"A. Yes, I believe it is.

"Q. And there were more than ten hours of discussion of investment, weren't there?

"A. I have already stated that.

"Q. There were approximately ten companies listed here, so it could have been more than two evenings that some of these companies were discussed, isn't that true?

"A. It probably was."

Finally on, the last one on Page 35. Line 3.

"Q. Did she express any dissatisfaction about Mr. Lamula personally?

"A. Yes, considerably.

"Q. What did she say?

"A. Why he hadn't been --"

MR. BLUM: Objection, your Honor.

I think this cross examination runs beyond the scope of anything that was said in direct.

MR. GOLDSTEIN: Your Honor, Mr. Blum had read directly before this.

THE COURT: Well, more important, while you may be adopting the witness as your own at this point, since I gather she is not going to appear personally -- is that correct?

MR. GOLDSTEIN: She may appear for our case. At this time we still do not know because of her condition.

MR. BLUM: My understanding, your Honor, was that she was kept from appearing for me but she will appear for them.

THE COURT: If she does appear, you will be able to cross examine her on her noncooperation with you. You are now adopting her as your own witness, continue.

"Q. Did she express any dissatisfaction about Mr. Lamula personally?

"A. Yes, considerably.

"Q. What did she say?

"A. Why he hadn't been to see her and she didn't think that he was treating her correctly.

"Q. By not treating her correctly, did you take that to mean in a social vain?"

MR. BLUM: Objection as leading, your Honor.

THE COURT: I'll allow it.

"A. A social vain, very personal."

MR. GOLDSTEIN: No further questions, your Honor.

THE COURT: May we excuse the witness? The witness excused.

We will take a ten-minute recess.

Again, I ask the jury not to discuss the case.

(Recess.)

THE COURT: Call your next witness.

MR. BLUM: John Galletta.

JOHN GALLETTA,

called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLUM:

Q. Mr. Calletta, where are you employed?

A. L. F. Rothschild & Company.

Q. Where do you perform those services for L. F. Rothschild? Where do you work?

A. I'm the supervisor of the Corrections Department.

Q. Where is that office located in which you work?

A. 99 William Street.

Q. In those offices, are the records kept of L. F. Rothschild & Company with regard to customers' accounts?

A. Yes.

Q. Are you familiar with the process whereby those records are kept?

A. Yes.

Q. Is it the normal practice of L. F. Rothschild in the course of its business to create entries in its records of each transaction or purchase or sale that takes place at or about the time that it occurs?

A. That's correct.

Q. In the ordinary course of the business of L. F. Rothschild are confirmations provided to the customer or to any duplicate names for advice indicated in the account, is that also a part of its ordinary course of business?

A. Yes.

Q. And are those confirmations provided at or about the time that the transaction is recorded in the records of L. F. Rothschild & Company?

A. Yes.

Q. I show you Plaintiff's Exhibit 45 already in evidence and ask you if these documents are confirmations of the kind that you have described.

A. Yes, they are.

Q. You have seen confirmations of this sort regularly in the course of your business, is that correct?

A. That's correct.

Q. Do they reflect, each of these confirmations, do they reflect transactions in the normal course which occurred in the account indicated thereon?

A. Yes, sir.

Q. And have you, yourself, had occasion to compare the information shown on those particular items before you which constitute Plaintiff's 45, with the records stored at L. F. Rothschild with regard to the account of Bernice Grupe?

A. Yes, I did.

Q. Did you find them to accurately reflect the indicated sales that are shown on those slips?

A. Yes, I did.

MR. BLUM: I have no further questions of this witness.

CROSS EXAMINATION

BY MR. GOLDSTEIN:

Q. Who were the confirmation slips sent to by L. F. Rothschild?

A. The ones he just showed me were sent to her bank. That is a duplicate instruction on her account that all confirmations of trades she does, she receives a copy and her bank receives a copy also.

Q. Her bank, who is that?

A. The name is Mid-Atlantic Consultants, Inc.

Q. And she gets a copy also?

A. Yes.

MR. GOLDSTEIN: No further questions.

THE COURT: The witness is excused.

I will instruct the jury that the records are now in evidence for the purpose of also proving the transactions themselves that Rothschild did make sales on the dates specified in the confirmations and in the amounts specified in the confirmations.

(Witness excused.)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

JULIO VALLEJO, JR., being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 703 REMSEN AVE. BROOKLYN, NYC.

That on the 25th day of APRIL, 1977, deponent personally served the within JOINT APPENDIX - VOLUME I OF III upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

By leaving 1 true cop~~ies~~y of same with a duly authorized person at their designated office.

By depositing ______ true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United States post office department within the State of New York.

Names of attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

SILBERFELD, DANZIGER & BANGSER
Attorneys for Plaintiff-Appellee
230 Park Ave.
New York, N. Y. 10017

Julio Vallejo Jr.

Sworn to before me this

25th day of APRIL, 1977.

Michael DeSantis
MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Queens County
Commission Expires March 30, 1979